SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff-Respondent,

-against-

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC,

Defendants-Appellants.

CLIFFORD S. ROBERT, ESQ. (Robert & Robert PLLC), MICHAEL FARINA ESQ. (Robert & Robert PLLC), CHRISTOPHER M. KISE, ESQ., (Continental PLLC), MICHAEL MADAIO, ESQ. (Habba Madaio & Associates, LLP), and ARMEN MORIAN, ESQ. (Morian Law PLLC),

Non-Party-Appellants.

Case No.:
2023-04925

Supreme Court Index No.:
452564/2022

NOTICE OF MOTION OF NON-PARTY APPELLANTS TO SEVER APPEALS

PLEASE TAKE NOTICE that upon the annexed affirmation of Brian J. Isaac, Esq. and Michael S. Ross, Esq., dated the 23rd day of January 2024, the exhibits attached thereto, the accompanying memorandum of law dated the 23rd day of January 2024, and all prior pleadings and proceedings herein, the undersigned will move this Court at a Motion Part at the Courthouse located at 27 Madison Avenue, New York, New York, on the 20th day of February 2024 at 10:00

AM, or as soon thereafter as counsel can be heard for an Order:

(a) severing Non-Party-Appellants' ("Counsel") appeal of that portion of the September 26, 2023 Order of Supreme Court, New York County (Engoron, J.S.C.) (the "Order") imposing sanctions against Counsel, from Defendants-Appellants' appeal of those portions of the Order granting partial summary judgment to Plaintiff-Respondent on the first cause of action and denying Defendants-Appellants' motion for summary judgment of dismissal; and

(b) granting such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR 2214(b), Plaintiff-Respondent shall serve answering papers, if any, at least seven (7) days before the return date of this motion.

Dated: New York, New York
January 23, 2024

Respectfully submitted,

BY: Brian J. Isaac, Esq.
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-and-

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Attorneys for Non-Party Appellants (ONLY)
Clifford S. Robert, Esq. (Robert & Robert, PLLC),
Michael Farina, Esq. (Robert & Robert, PLLC),
Christopher M. Kise, Esq. (admitted pro hac vice)
(Continental PLLC), Michael Madaio, Esq.
(Habba Madaio & Associates, LLP) and Armen
Morian, Esq. (Morian Law PLLC)

TO:

Clerk of the Court

Judith N. Vale, Esq.
Dennis Fan, Esq.
New York State Attorney General's Office
Attorneys for Plaintiff-Respondent
People of the State of New York, by
Letitia James, Attorney General of the
State of New York
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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff-Respondent,

-against-

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC,

Defendants-Appellants.

CLIFFORD S. ROBERT, ESQ. (Robert & Robert PLLC), MICHAEL FARINA ESQ. (Robert & Robert PLLC), CHRISTOPHER M. KISE, ESQ., (Continental PLLC), MICHAEL MADAIO, ESQ. (Habba Madaio & Associates, LLP), and ARMEN MORIAN, ESQ. (Morian Law PLLC),

Nonparty-Appellants.

Case No.
2023-04925

Supreme Court Index No.:
452564/2022

AFFIRMATION OF BRIAN J. ISAAC AND MICHAEL S. ROSS IN SUPPORT OF NON-PARTY APPELLANTS' MOTION TO SEVER THEIR APPEAL

Brian J. Isaac, Esq. and Michael S. Ross, Esq., attorneys duly admitted to practice law before the Courts of the State of New York, hereby affirm the following statements to be true under the penalties of perjury:

1. Brian J. Isaac, Esq., a partner at the law firm Pollack Pollack Isaac & DeCicco, LLP and, Michael S. Ross, Esq., the principal of the Law Offices of Michael S. Ross, represent non-

party appellants Clifford S. Robert, Esq. (Robert & Robert PLLC), Michael Farina, Esq. (Robert & Robert PLLC), Christopher M. Kise, Esq. (Continental PLLC), Michael Madaio, Esq. (Habba Madaio & Associates, LLP), and Armen Morian, Esq. (Morian Law PLLC) (collectively, "Non-Party Appellants" or "Counsel") in connection with the above-captioned appeal. We are fully familiar with the facts and circumstances of this matter based upon a full review of the files maintained by our offices.

2. This affirmation in support of the motion of Non-Party Appellants to sever their appeal of that portion of the September 26, 2023 Order of the Supreme Court, New York County (Engoron, J.S.C.) (the "Order") granting sanctions against them, from Defendants-Appellants' appeal of those portions of the Order granting partial summary judgment to Plaintiff-Respondent on the first cause of action and denying Defendants-Appellants' motion for summary judgment of dismissal.

3. On August 30, 2023, Plaintiff-Respondent filed a motion for partial summary judgment against Defendants-Appellants under Motion Sequence No. 26. A true and correct copy of the Notice of Motion is annexed hereto as **Exhibit A**.

4. On August 30, 2023, Defendants-Appellants filed a motion for summary judgment of dismissal under Motion Sequence No. 27. A copy of the Notice of Motion is annexed hereto as **Exhibit B**.

5. On September 5, 2023, Plaintiff-Respondent filed a motion for sanctions against Counsel pursuant to 22 NYCRR §130-1.1 under Motion Sequence No. 28. A true and correct copy of the Notice of Motion is annexed hereto as **Exhibit C**.

6. On September 26, 2023, the Supreme Court (Engoron, J.S.C.) issued a decision and order consolidating his rulings on the foregoing motions into one Decision and Order. In the Order,

the Supreme Court granted Plaintiff-Respondent's motion for sanctions, finding that Counsel's legal arguments were frivolous. The Supreme Court relied on the following portion of 22 NYCRR §130-1.1: "conduct is frivolous if: (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law." The Supreme Court stated that "Defendants' inscrutable persistence in re-presenting" their arguments satisfied the referenced criteria. A true and correct copy of that decision is annexed hereto as **Exhibit D**.

36. Following the Order, Non-Party Appellants filed Notices of Appeal and recorded the initial case information with this Court to obtain a separate appellate case number for their appeal of that portion of the Order imposing sanctions. Copies of the Notices of Appeal are annexed hereto as **Exhibit E**.

7. On October 30, 2023, the Clerk's office rejected Counsel's filings, directing Counsel to "file under the case #2023-04925," i.e., the appellate case number assigned to Defendants-Appellants' appeal. A copy of the notification from the Clerk's office is annexed hereto as **Exhibit F**.

Dated: New York, New York
January 23, 2024

Brian J. Isaac, Esq.

Michael S. Ross

Michael S. Ross, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff-Respondent,

-against-

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC,

Defendant-Appellants.

CLIFFORD S. ROBERT, ESQ. (Robert & Robert PLLC), MICHAEL FARINA ESQ. (Robert & Robert PLLC), CHRISTOPHER M. KISE, ESQ., (Continental PLLC), MICHAEL MADAIO, ESQ. (Habba Madaio & Associates, LLP), and ARMEN MORIAN, ESQ. (Morian Law PLLC),

Non-Party Appellants.

Case No.:
2023-04925

Supreme Court Index No.:
452564/2022

MEMORANDUM OF LAW IN SUPPORT OF NON-PARTY APPELLANTS' MOTION TO SEVER APPEAL

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1. Non-party Appellants Clifford S. Robert, Esq. (Robert & Robert PLLC), Michael Farina Esq. (Robert & Robert PLLC), Christopher M. Kise, Esq., (Continental PLLC), Michael Madaio, Esq. (Habba Madaio & Associates, LLP), and Armen Morian, Esq. (Morian Law PLLC), (collectively, "Counsel"), respectfully submit this memorandum of law in support of their motion pursuant to CPLR §603 and this Court's inherent discretionary powers to sever and assign a separate appellate case number to their appeal from that portion of the Decision and Order of the Honorable Arthur F. Engoron, J.S.C. ("Justice Engoron") dated September 26, 2023 and duly entered by the Clerk of the Supreme Court of the State of New York, County of New York on September 27, 2023, imposing sanctions against Counsel.

PRELIMINARY STATEMENT

2. On September 26, 2023, Justice Engoron issued a decision and order (the "September 26th Order" or "Order") wherein the Supreme Court, *inter alia*, (i) granted the motion of Plaintiff-Respondent People of the State of New York, by Letitia James, Attorney General of the State of New York (the "Attorney General") seeking partial summary judgment against Defendants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, the DJT Revocable Trust, the Trump Organization Inc, the Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC (collectively, "Defendants") ("Attorney General's Partial SJM"), and (ii) denied Defendants motion seeking summary judgment of dismissal ("Defendants' SJM"). The September 26th Order also granted a separate motion, brought by the Attorney General under a different motion sequence number, seeking sanctions against Counsel ("Sanctions Motion") to the extent of imposing sanctions in the amount of $7,500 against each of Counsel, or $37,500 total.

3. It is beyond dispute that those portions of the September 26th Order granting the Attorney General's Partial SJM and denying Defendants' SJM are entirely distinct from that portion of the Order granting the Sanctions Motion. Defendants are not aggrieved by that portion of the September 26th Order awarding sanctions against Counsel, and Counsel are not aggrieved by those portions of the September 26th Order granting partial summary judgment to the Attorney General and denying summary judgment to Defendants. Other than the fact that the two rulings originate from the September 26th Order, they are separate in all respects. Indeed, the propriety of Counsel's advocacy and motion practice on behalf of their clients has absolutely nothing to do with Defendants' alleged violations of Executive Law §63(12). The consolidation of Counsel's appeal of the baseless sanctions decision (imposed solely for fulfilling their ethical duty to advocate for their clients competently and diligently) with Defendants' appeal of Justice Engoron's rulings granting the Attorney General's Partial SJM and denying Defendants' SJM, will undoubtedly and seriously prejudice Counsel.[1]

4. Accordingly, Counsel respectfully request that this Court sever their appeal from that portion of the September 26th Order imposing sanctions against Counsel and require the Clerk of the Court to assign a separate appellate case number to their Notices of Appeal.

BACKGROUND

5. The Attorney General filed two separate motions, one seeking partial summary judgment on August 30, 2023 under Sequence No. 26 (Attorney General's Partial SJM), and one

[1] Counsel had every right and obligation pursuant to their duties of competence and diligence under Rules 1.1 and 1.3 of the New York Rules of Professional Conduct to make the arguments that are the subject of the sanctions award. See Veliz v. Crown Lift Trucks, 714 F. Supp. 49, 56 [EDNY 1989] ["The imposition of sanctions is a serious matter and should be approached with circumspection. An attorney's name and reputation are his [or her] stock in trade and thus any unfair or hasty sullying of that name strikes at the sanctioned attorney's livelihood. These considerations suggest that, whenever possible, doubts should be resolved in counsel's favor."]; see also State Farm Mut. Auto. Ins. Co. v. Precious Physical Therapy, Inc., No. 19-10835, 2021 U.S. Dist. LEXIS 70109, at *4 [E.D. Mich. 2021].

seeking sanctions pursuant to 22 NYCRR §130-1.1 on September 5, 2023 under Sequence No. 28 (Sanctions Motion) (see Affirmation of Brian J. Isaac and Michael S. Ross ("Aff."), **Exhibits A and C**). Defendants filed a motion seeking summary judgment of dismissal on August 30, 2023, under Sequence No. 27 (Defendants' SJM) (see Aff., **Exhibit B**).

6. In the September 26th Order, Justice Engoron consolidated his rulings on the Attorney General's Partial SJM, Defendants' SJM, and the Sanctions Motion into one decision and order (see Aff., **Exhibit D**). Following the September 26th Order, Counsel filed Notices of Appeal and recorded the initial case information with this Court to obtain a separate appellate case number for their appeal of that portion of the Order awarding sanctions (see Aff., **Exhibit E**). On October 30, 2023, the Clerk's office rejected Counsel's filings, directing Counsel to "file under the case #2023-04925," i.e., the appellate case number assigned to Defendants' appeal (see Aff., **Exhibit F**).

ARGUMENT

7. The rules of this Court do not contemplate a concurrent appeal by a non-party. Specifically, 22 NYCRR §1250.1 provides: "[t]he word 'concurrent,' when used to describe appeals, shall refer to those appeals which have been taken separately from the same order or judgment *by parties* whose interests are not adverse to one another as relates to those appeals." (emphasis added). While concurrent appeals, i.e., those arising out of a single order or judgment, would normally be perfected together under the rules of this Court, the circumstances, as well as the non-party nature of this sanctions appeal, militate in favor of permitting the appeals of the

summary judgment decision and the sanctions to proceed separately, under separate appeal numbers. 22 NYCRR §1250.9(f)(2).

8. The sanctions appeal and the summary judgment appeal have nothing in common. Counsel are not aggrieved by those portions of the September 26th Order granting the Attorney General's SJM and denying Defendants' SJM, and Defendants are not aggrieved by that portion of the September 26th Order granting the Sanctions Motion. Thus, the appeals implicate distinct issues: (1) whether arguments made by Counsel in the course of their advocacy can subject Counsel to sanctions; and (2) the substantive boundaries of Executive Law §63(12). While there are no directly applicable appellate rules or CPLR provisions—and seemingly no case law—on the matter of a separate concurrent appeal by a non-party, jurisprudence governing the severance of claims is instructive and weighs strongly in favor of separate appeals here.

POINT I

THE CONCERNS RAISED BY CONCURRENT NON-PARTY APPEALS ARE SUBSTANTIALLY SIMILAR TO THOSE THAT COURTS CONSIDER IN GRANTING SEVERANCE OF CLAIMS

9. CPLR §603 permits a court to sever claims "in furtherance of convenience or to avoid prejudice." Isidore Margel Trust Mitzi Zank Trustee v. Mt. Hawley Ins. Co., 155 AD3d 618, 619 [2d Dept. 2017] (internal quotation marks omitted). CPLR §1010 affords the court discretionary authority to sever or dismiss a third-party action without prejudice where the controversy "will unduly delay the determination of the main action or *prejudice the substantial rights of any party*." Gomez v. City of New York, 78 AD3d 482, 483 [1st Dept. 2010] (emphasis

added) (internal quotations omitted). These same concerns, namely commonality and avoiding prejudice, are at play in a similar manner and to a similar degree here.

A. The Factual and Legal Issues in the Sanctions Appeal are Largely Unrelated to those in the Summary Judgment Appeals

10. While the consolidation of appeals may be proper where they "involve common factual and legal issues that are not overly complex," here, the factual and legal issues are not only complex but vastly different (see Maltese v. Port Auth., 204 AD3d 542, 542 [1st Dept. 2022]). The differing sources of law on which each appeal is based creates an "absence of [] commonality" among them. See CPLR §603; 3-603 Weinstein-Korn-Miller, N.Y. Civ. Prac. CPLR §603.03 (remarking that the granting of severance generally depends upon an absence of commonality on issues of law or fact). The appeal of the Sanctions Motion involves boilerplate legal issues. The legal arguments that will be made in support of reversing the sanctions decision are predicated upon clearly established law and procedures, which Justice Engoron undoubtedly violated. To the contrary, the summary judgment appeals involve numerous and complex factual and legal issues, including the scope and interpretation of Executive Law §63(12).

11. In the September 26th Order, Justice Engoron determined that Counsel's legal arguments (which Counsel were not only well within their rights to make but were required to advance in order to fulfill their fiduciary duty to their clients) were frivolous within the meaning of 22 NYCRR §130-1. Under the portion of 22 NYCRR §130-1.1 upon which Justice Engoron relied, "conduct is frivolous if: (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law." (see Aff., **Exhibit D**). Justice Engoron cites "Defendants' inscrutable persistence in re-presenting" their arguments as satisfying this criterion, but that contention is patently meritless. Moreover, as

relevant to the consolidation of appeals, the standard prescribed in 22 NYCRR §130-1.1 has nothing whatsoever to do with Executive Law §63(12).

12. Here, Counsel's appeal of the Sanctions Motion and Defendants' summary judgment appeals are similar to the circumstances in Herskovitz v. Klein, 91 AD3d 598, 599 [2d Dept. 2012]. In Herskovitz, the court held that the claims at issue were "not intertwined so as to raise concerns regarding the interests of judicial economy or consistency of verdicts[,]" and therefore should have been split into separate appeals (id.; see Belair Care Ctr., Inc. v. Cool Insuring Agency, Inc., 180 AD3d 739, 742 [2d Dept. 2020] [stating that where "individual issues predominate," and the separate appeals would "concern[] particular circumstances [solely] applicable to . . . each appellant," the court should have separated the actions "in the interests of convenience and avoidance of prejudice"]). Thus, as the two appeals do not involve "common factual and legal issues," and one of them is "overly complex," the "interests of judicial economy and consistency" would more likely be hindered than helped by having them combined (see Maltese, 204 AD3d at 542, citing Luckey v. City of New York, 177 AD3d 460 [1st Dept. 2019]; Wilson v. City of New York, 1 AD3d 157, 157 [1st Dept. 2003]).

B. The Prejudice to Counsel Without Severance Is Manifest

13. "Severances, separate trials and stays can be employed to avoid any possible prejudice." (Krause v. American Guarantee & Liability Ins. Co., 22 NY2d 147, 147 [1968]). The risk of prejudice if separate appellate case numbers are not granted is significant; it would infringe upon the due process rights of Counsel. As in Schneph v. New York Times Co., if the unrelated appeals are not separated, there is "a reasonable likelihood that prejudice, unconscious or otherwise, will result in a consideration" of both appeals concurrently (21 AD2d 599, 601 [1st Dept. 1964]). Kelly v. Yannotti, 4 NY2d 603, 607-608 [1958], is also instructive in this regard. If this

Court is forced to consider each appeal together (including the legal issues related to the confines of counsel's ability to competently and diligently represent their clients), the Court may be more disposed to render a decision adverse to Counsel if the summary judgment rulings are not reversed, or adverse to the Defendants if the sanctions decision is reversed. See id.

14. Additionally, if this motion is granted, the appeal of that portion of the September 26th Order sanctioning Counsel will be perfected forthwith, and Counsel will be able to designate a single attorney to argue the appeal. Early resolution of the sanctions ruling will make argument and disposition of the summary judgment appeals more manageable. Absent severance, Counsel will be forced to argue mammoth summary judgment appeals implicating numerous and complex factual and legal issues, without leaving sufficient time for separate outside counsel, representing Counsel's independent interests, to argue the sanctions appeal, all of which must be addressed in the same argument on a voluminous combined record, during the same limited timeframe. Given the necessarily short time granted for oral argument on a busy calendar, this will result in short shrift being paid to the serious and separable issue of an improper imposition of sanctions.

15. Accordingly, "in the interests of justice and to avoid any prejudice" separate appellate case numbers should be granted for both the sanctions appeal and the summary-judgment appeals (see Schneph, 21 AD2d at 600-601). In sum, severance will streamline appeal of the sanctions decision and allow for a prompt and straightforward resolution separate and apart from the summary judgment appeals, the latter of which will surely far surpass the sanctions appeal in complexity, record size, and briefing volume and take far longer for the Court to consider and resolve. Moreover, it will obviate the concern that issues related to Counsel's independent interests are not lost in a morass of summary judgment briefing, and a multitude of legal challenges having

nothing to do with the sanctions appeal. Similarly, should this Court grant severance, the unique issues raised by the sanctions appeal will not complicate the summary judgment appeals.

POINT II

CONSOLIDATION OF THE SANCTIONS APPEAL WITH DEFENDANTS' SUMMARY JUDGMENT APPEAL IS FUNDAMENTALLY UNFAIR

16. By forcing a consolidation of the two appeals, the Court is creating a fundamentally unfair situation. Under 22 NYCRR §600.15(e)(1), "not more than 15 minutes" is permitted for each side to make their argument before this Court. Although it is possible to request additional time for argument, if such request is denied or if equal argument time were not given, Counsel will be placed in the fundamentally unfair position of having to forfeit argument on the sanctions appeal to devote all of the argument time to protecting their clients' rights in the summary judgment appeals. This Court should not create a fundamentally unfair situation that forces Counsel to sacrifice their own interests to protect the interests of their clients.

CONCLUSION

17. Granting separate appellate case numbers would be both "in furtherance of convenience," and would "avoid prejudice," while also ensuring that no party is denied its due process guarantees (see Saunders v. Saunders, 283 NYS2d 969 [Sup. Ct., Kings County 1967]; McCormack v. Graphic Machinery Services, Inc., 139 AD2d 631, 633 [2d Dept. 1988] ["CPLR 603 grants the court discretion to sever any claims or issues and to order a separate trial in furtherance of convenience or to avoid prejudice"]).

WHEREFORE, for the reasons set forth above, non-party appellants respectfully request that this Court sever their appeal from the September 26th Order and compel the Clerk of the Court to issue a separate appellate case number for the Notices of Appeal.

Dated: New York, New York
January 23, 2024

Respectfully submitted,

BY: Brian J. Isaac, Esq.
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-and-

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Attorneys for Non-Party Appellants (ONLY) Clifford S. Robert, Esq. (Robert & Robert, PLLC), Michael Farina, Esq. (Robert & Robert, PLLC), Christopher M. Kise, Esq. (admitted pro hac vice) (Continental PLLC), Michael Madaio, Esq. (Habba Madaio & Associates, LLP) and Armen Morian, Esq. (Morian Law PLLC)

Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

-against-

DONALD J. TRUMP, *et al*.,

Defendants.

Index No. 452564/2022

NOTICE OF MOTION FOR PARTIAL SUMMARY JUDGMENT

PLEASE TAKE NOTICE that upon the accompanying memorandum of law, rule 202.8-g statement of material facts, and declaration of Colleen K. Faherty with exhibits appended thereto, and upon all the pleadings and proceedings to date, petitioner the People of the State of New York, by Letitia James, Attorney General of the State of New York, will move this Court before the Honorable Arthur Engoron, New York State New York County Supreme Court Justice, at the Supreme Court, Civil Branch, New York County, 60 Centre Street, New York, New York, 10007, on a date set by the Court, for an Order, pursuant to C.P.L.R. § 3212(e), (g):

1. Finding in Plaintiff's favor judgment as a matter of law on Plaintiff's First Cause of Action for fraud under Executive Law § 63(12) and limiting the contested issues of fact for trial, by specifying such facts deemed established for all purposes in this action; and
2. For such further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Court's Order dated June 9, 2023, any opposing memoranda shall be served by September 1, 2023; and any reply memoranda shall be served by September 15, 2023.

Dated: New York, New York
August 4, 2023

By:
Andrew Amer
Colleen K. Faherty
Alex Finkelstein
Sherief Gaber
Wil Handley
Eric R. Haren
Mark Ladov
Louis M. Solomon
Stephanie Torre
Kevin C. Wallace

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Attorney for the People of the State of New York

cc: Counsel of record

Exhibit B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

vs.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC,

Defendants.

Index No. 452564/2022

NOTICE OF JOINT MOTION

Hon. Arthur F. Engoron

PLEASE TAKE NOTICE that upon the annexed Affirmation of Clifford S. Robert, Esq. dated August 4, 2023, together with the exhibits annexed thereto, the accompanying Memorandum of Law dated August 4, 2023, the accompanying Statement of Undisputed Material Facts dated August 4, 2023, and all prior papers and proceedings herein, defendants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC (collectively, the "Defendants"), will move this Court, Supreme Court of the State of New York, County of New York, at the courthouse located at 60 Centre Street, Room 130, New York, New York 10007, on

the **22nd** day of **September 2023, at 9:30 a.m.**, or as soon thereafter as counsel may be heard, for an Order:

(a) pursuant to CPLR § 3212, granting summary judgment in favor of the Defendants, dismissing the Complaint (NYSCEF Doc. No. 1) of Plaintiff People of the State of New York, by Letitia James, Attorney General of the State of New York, in its entirety; and

(b) awarding such other and further relief as the Court may deem just, equitable and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to the Court's Order dated August 1, 2023 (NYSCEF Doc. No 646), opposition papers shall be served on all counsel of record by electronic mail, with a courtesy copy delivered to Chambers via electronic mail, on or before September 1, 2023, and reply papers shall be served in the foregoing manner on or before September 15, 2023.

Dated: New York, New York
August 4, 2023

s/ *Michael Madaio*
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-and-

Dated: Uniondale, New York
August 4, 2023

s/ *Clifford S. Robert*
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-and-

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New York, New York 10005

Exhibit C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES,
Attorney General of the State of New York,

Plaintiff,

-against-

DONALD J. TRUMP, *et al*.,

Defendants.

Index No. 452564/2022

NOTICE OF MOTION FOR SANCTIONS PURSUANT TO 22 N.Y.C.R.R. § 130-1.1

PLEASE TAKE NOTICE that upon the accompanying memorandum of law, Plaintiff the People of the State of New York, by Letitia James, Attorney General of the State of New York, will move this Court at 9:30am on September 22, 2023, or as soon thereafter as counsel can be heard, at the Supreme Court, Civil Branch, New York County, 60 Centre Street, New York, New York, 10007, in the Motion Submission Part Courtroom, Room 130, for an Order pursuant to 22 N.Y.C.R.R. § 130-1.1 imposing sanctions against Defendants and their counsel for their frivolous conduct in raising legal arguments in connection with the parties' pending dispositive motions that have already been rejected in prior rulings by this Court and the First Department, and granting such further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to C.P.L.R. § 2214(b), answering papers and notice of cross-motion with supporting papers, if any, shall be served upon the undersigned at least seven days prior to the return date of this motion.

Dated: New York, New York
September 5, 2023

LETITIA JAMES
Attorney General of the State of New York

By: /s/ Andrew Amer
Andrew Amer
Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6127
andrew.amer@ag.ny.gov

cc: Counsel of record via NYSCEF

Exhibit D

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** **37**

Justice

----------X

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

- v -

DONALD J. TRUMP, DONALD TRUMP JR, ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

Defendants.

----------X

INDEX NO. 452564/2022

MOTION DATES 08/30/2023, 08/30/2023, 09/05/2023

MOTION SEQ. NO. 026, 027, 028

DECISION + ORDER ON MOTIONS

The following e-filed documents, listed by NYSCEF document number (Motion 026) 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1292, 1293, 1294, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415,

1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1442, 1443, 1444, 1445, 1446, 1447

were read on this motion for PARTIAL SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 027) 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1474

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 028) 1263, 1264, 1265, 1276, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473

were read on this motion for SANCTIONS.

Upon the foregoing documents, it is hereby ordered that defendants' motion for summary judgment is denied, plaintiff's motion for partial summary judgment is granted in part, and plaintiff's motion for sanctions is granted in part, all as detailed herein.

This action arises out of a years-long investigation that plaintiff, the Office of the Attorney General of the State of New York ("OAG"), conducted into certain business practices that defendants engaged in from 2011 through 2021. OAG alleges that the individual and entity defendants committed repeated and persistent fraud by preparing, certifying, and submitting to lenders and insurers false and misleading financial statements, thus violating New York Executive Law § 63(12).

Procedural Background

In 2020, OAG commenced a special proceeding seeking to enforce a series of subpoenas against various named defendants and other persons and entities. This Court presided over that proceeding and issued several orders compelling compliance with OAG's subpoenas. See People v The Trump Org., Sup Ct, NY County, Index No. 541685/2020. During that proceeding, OAG and the Trump Organization entered into an agreement, which, broadly speaking, tolled the statute of limitations from November 5, 2020, through May 31, 2022. NYSCEF Doc. No. 1260.

On November 3, 2022, this Court found preliminarily that defendants had a propensity to engage in persistent fraud by submitting false and misleading Statements of Financial Condition ("SFCs") on behalf of defendant Donald J. Trump ("Donald Trump"). NYSCEF Doc. No. 183. Accordingly, the Court granted a preliminary injunction against any further fraud and appointed the Hon. Barbara S. Jones (ret.) as an independent monitor to oversee defendants' financial statements and significant asset transfers. NYSCEF Doc. Nos. 193 and 194.

Defendants moved to dismiss the complaint. In a Decision and Order dated January 6, 2023, this Court denied the motion. NYSCEF Doc. Nos. 453. Defendants appealed, resulting in a January 6, 2023 Order wherein the Appellate Division, First Department modified this Court's order to the extent of: (1) declaring that the "continuing wrong doctrine does not delay or extend [the statute of limitations]"; (2) finding that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and timely against defendants not subject to the tolling agreement if they accrued after February 6, 2016; and (3) dismissing the complaint as against defendant Ivanka Trump on statute of limitations grounds, finding that she was not an employee of the Trump Organization at the time at which the parties entered into the tolling agreement. People v Trump, 217 AD3d 609 (1st Dept 2023).

The Appellate Division declined to dismiss *any* other defendants or *any* causes of action.

Discovery ended on July 28, 2023, and OAG filed a note of issue shortly thereafter. NYSCEF Doc. No. 644. OAG now moves for partial summary judgment on its first cause of action, for fraud under Executive Law § 63(12). NYSCEF Doc. No. 765. Separately, plaintiff now moves, pursuant to 22 NYCRR 130-1.1, to sanction defendants for frivolous motion practice. NYSCEF Doc. No. 1263. Defendants also move for summary judgment, seeking to dismiss the complaint in its entirety. NYSCEF Doc. No. 834.

Executive Law § 63(12)

Executive Law § 63(12) provides, as here pertinent, as follows:

> Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of section four hundred forty of the former penal law or section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper. The word "fraud" or "fraudulent" as used herein shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions. The term "persistent fraud" or "illegality" as used herein shall include continuance or carrying on of any fraudulent or illegal act or conduct. The term "repeated" as used herein shall include repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON ALL CAUSES OF ACTION

Arguments Defendants Raise Again

Standing and Capacity to Sue

Defendants' arguments that OAG has neither capacity nor standing to sue under Executive Law § 63(12), and that the disclaimers of non-party accountants Mazars insulate defendants, invoke the time-loop in the film "Groundhog Day." This Court emphatically rejected these arguments in its preliminary injunction decision and in its dismissal decision, and the First Department affirmed both. Defendants' contention that a different procedural posture mandates a reconsideration, or *a fortiori*, a reversal, is pure sophistry[1].

As this Court and others have made abundantly clear, "[i]t is not disputed that the Attorney General is empowered to sue for violations of [Executive Law § 63(12)]." People v Greenberg, 21 NY3d 439, 446 (2013) (finding Executive Law § 63(12) to be broadly worded anti-fraud device); People v Ford Motor Co., 74 NY2d 495, 502 (1989) ("Executive Law § 63(12) is the procedural route by which the Attorney-General may apply to Supreme Court for an order enjoining repeated illegal or fraudulent acts").

Parens Patriae and Consumer Ambit

Defendants repeat the erroneous argument that the complaint must be dismissed because OAG cannot demonstrate the requirements of a *parens patriae* action, which is one in the public interest. "*Parens patriae* is a common-law standing doctrine that permits the state to commence an action to protect a public interest, like the safety, health or welfare of its citizens." People v Grasso, 11 NY3d 64, 72 at n 4 (2008). Invocation of such doctrine, or its requirements, is not necessary where, as here, the New York legislature has specifically empowered the Attorney General to bring such an action pursuant to Executive Law § 63(12). People v Credit Suisse Sec. (USA) LLC, 31 NY3d 622, 633 (2018) ("it is undisputed that Executive Law § 63(12) gives the Attorney General standing to redress liabilities recognized elsewhere in the law, expanding the scope of available remedies"); People v Trump Entrepreneur Initiative LLC, 137 AD3d 409, 417 (1st Dept 2016) ("[E]ven apart from prevailing authority, the language of the statute itself appears to authorize a cause of action; like similar statutes that authorize causes of action, § 63(12) defines the fraudulent conduct that it prohibits, authorizes the Attorney General to commence an action or proceeding to foreclose that conduct, and specifies the relief, including equitable relief, that the Attorney General may seek").

In any event, even if compliance with the requirements of the *parens patriae* doctrine is necessary, which it is not, OAG has easily satisfied those requirements, as it is well-settled that "[i]n varying contexts, courts have held that a state has a quasi-sovereign interest in protecting the integrity of the marketplace." Grasso at 69 n 4; People v Coventry First LLC, 52 AD3d 345, 346 (1st Dept 2008) ("the claim pursuant to Executive Law § 63(12) constituted proper exercises

[1] Indeed, the Court made this crystal clear in its January 6, 2023 order when it found: "Here, the issues of capacity and standing, are pure issues of law and do not depend on a trial of disputed issues of fact. Simply put, who the instant parties are and what the law says, which determine capacity and standing, are not disputed issues of fact that need to be tried." NYSCEF Doc. No. 453 at 4.

of the State's regulation of businesses within its borders in the interest of securing an honest marketplace"); People v Amazon.com, Inc., 550 F Supp 3d 122, 130-131 (SD NY 2021) ("[T]he State's statutory interest under § 63(12) encompasses the prevention of either 'fraudulent or illegal' business activities. Misconduct that is illegal for reasons other than fraud still implicates the government's interests in guaranteeing a marketplace that adheres to standards of fairness…").

Defendants' rehashed argument that OAG's complaint must be dismissed because it is not designed to protect consumers is unavailing. New York v Feldman, 210 F Supp 2d 294, 299-300 (SD NY 2002) ("[D]efendants' claim that section 63(12) is limited to consumer protection actions is simply incorrect. The New York Attorney General has repeatedly used section 63(12) to secure relief for persons who are not consumers in cases that are not consumer protection actions").

Defendants cite to the trial court decision People v Domino's Pizza, Inc., NY Slip Op 30015(U) (Sup Ct, NY County 2021), which is not binding on this Court, as authority for the proposition that any relief sought here should come in the form of private contract litigation, not "a law enforcement action under a statute designed to address public harm." NYSCEF Doc. No. 835 at 39. However, Domino's is wholly distinguishable from the instant case. There, the Court found that "OAG did not establish that Domino's representations to franchisees… were false, deceptive, or misleading. Accordingly, the Court concludes that OAG has not established that Domino's engaged in conduct that 'tends to deceive or creates an atmosphere conducive to fraud.'" Domino's at 26[2]. Here, as discussed *infra*, OAG demonstrates that defendants repeatedly submitted fraudulent financial documents to obtain financial benefits which otherwise they would not have received.

Defendants glaringly misrepresent the requirements of an Executive Law § 63(12) cause of action. Citing to People v Northern Leasing Sys., Inc., 70 Misc 3d 256, 267 (Sup Ct, NY County 2021), defendants assert that OAG must show "the practice is one likely to mislead a reasonable consumer acting reasonably under the circumstances." NYSCEF Doc. No. 835 at 42. However, the word "consumer" does not appear anywhere in the referenced decision, and defendants' characterization of its holding is inaccurate[3]. Northern Leasing confirms that the "test for fraud under Executive Law § 63(12) is whether an act tends to deceive or creates an environment conducive to fraud." Northern Leasing at 267 (further holding "Executive Law § 63(12) expands fraud to encompass new liability, while including non-statutory fraud claims" and finding that "[a] claim under Executive Law § 63(12) is the exercise of 'the State's regulation of businesses within its borders in the interest of securing an honest marketplace'").

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[2] As the failure to demonstrate false misrepresentations foreclosed the possibility of liability on that issue in Domino's, any commentary about the statute's requirements was pure *dicta*.

[3] Although "consumer" does appear in the First Department's affirmance of Northern Leasing, it does not advance defendants' proposition that Executive Law § 63(12) actions be consumer oriented; it simply reaffirms that "the test for fraud is whether the targeted act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." 193 AD3d 67 (1st Dept 2021). The fact that Northern Leasing challenged actions targeted at consumers does not mean that Executive Law § 63(12) is restricted to such actions.

Non-Party Disclaimers

Defendants, yet again, argue that OAG's complaint must be dismissed because the SFCs contain language, provided by non-party accountants Mazars, that indicate that they have not audited or reviewed the accompanying financial statements and therefore cannot express an opinion as to whether the financial statements comply with Generally Accepted Accounting Principles ("GAAP"). However, as this Court already ruled, these non-party disclaimers do not insulate defendants from liability, as they plainly state that "Donald J. Trump is responsible for the preparation and fair presentation of the financial statement in accordance with accounting principles generally accepted in the United States of America and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the financial statement." NYSCEF Doc. No. 183.

As this Court explained in its November 3, 2022 Decision and Order: "[t]he law is abundantly clear that" using a disclaimer as a defense to a justifiable reliance claim requires proof that: "(1) the disclaimer is made sufficiently specific to the particular type of fact misrepresented or undisclosed; and (2) the alleged misrepresentations or omissions did not concern facts peculiarly within the [defendant's] knowledge." Basis Yield Alpha Fund (Master) v Goldman Sachs Grp., Inc., 115 AD3d 128, 137 (1st Dept 2014) ("a [plaintiff] may not be precluded from claiming reliance on misrepresentation of facts peculiarly within the [defendant's] knowledge"); People v Bull Inv. Grp., Inc., 46 AD2d 25, 29 (3d Dept 1974) ("It has been stated that '[t]he rule is clear that where one party to a transaction has superior knowledge, or means of knowledge not open to both parties alike, he is under a legal obligation to speak and his silence constitutes fraud"). As the SFCs did not particularize the type of fact misrepresented or undisclosed and were unquestionably based on information peculiarly within defendants' knowledge, defendants may not rely on such purported disclaimers as a defense.

In sum, the Mazars disclaimers put the onus for accuracy squarely on defendants' shoulders.

Scienter and "Participation" Requirements

Defendants erroneously claim that Fletcher v Dakota, Inc, 99 AD3d 43, 49 (1st Dept 2012), stands for the proposition that the purported "participation element [of a cause of action under Executive Law § 63(12)] is satisfied where the defendant 'directed, controlled, or ratified the decision that led to plaintiff's injury.'" However, Fletcher is not an Executive Law § 63(12) action, it was brought as a corporate tort; accordingly, is not relevant here.[4] Executive Law § 63(12) is much more than a mere codification of common law fraud.

Defendants also incorrectly rely on Abrahami v UPC Const. Co., 224 AD2d 231, 233 (1st Dept 1996), for the proposition that "[m]erely providing copies of purportedly false financial statements is insufficient." NYSCEF Doc. No. 835 at 55. However, as Abrahami was not brought pursuant to Executive Law § 63(12), its analysis regarding "intent to deceive" is irrelevant. Unlike the situation in Abrahami, where an action is brought pursuant to Executive

[4] In fact, had defendants not cut off the beginning of the sentence they cited, it would be evident on its face that such case is legally irrelevant, as the full sentence reads: "A leading treatise on corporations states that a director may be held individually liable to third parties for a corporate tort if he either participated in the tort or else 'directed, controlled, approved or ratified the decision that led to the plaintiff's injury.'" Fletcher at 49.

Law § 63(12), "good faith or lack of fraudulent intent is not in issue." People v Interstate Tractor Trailer Training, Inc., 66 Misc 2d 678, 682 (Sup Ct, NY County 1971) (holding liability under Executive Law § 63(12) does not require demonstrating an "intent to defraud"); Trump Entrepreneur Initiative at 417 ("fraud under section 63(12) may be established without proof of scienter or reliance"); Bull Inv. Grp. at 27 ("[i]t is well-settled that the definition of fraud under subdivision 12 of section 63 of the Executive Law is extremely broad and proof of scienter is not necessary").

Disgorgement of Profits

In flagrant disregard of prior orders of this Court *and* the First Department, defendants repeat the untenable notion that "disgorgement is unavailable as a matter of law" in Executive Law § 63(12) actions. NYSCEF Doc. No. 835 at 70. This is patently false, as defendants are, or certainly should be, aware that the Appellate Division, First Department made it clear *in this very case* that "[w]e have already held that the failure to allege losses does not require dismissal of a claim for disgorgement under Executive Law § 63(12)." Trump, 217 AD3d at 610.

Defendants nonetheless rely on the trial court decision in People v Direct Revenue, LLC, 19 Misc 3d 1124(A) (Sup Ct, NY County 2008), for the proposition that Executive Law § 63(12) "do[es] no[t] authorize the general disgorgement of profits received from sources other than the public." NYSCEF Doc. No. 835 at 71-72. However, defendants' neglect to mention that Direct Revenue was superseded, and essentially overruled, in 2016 by the New York Court of Appeals in People v Greenberg, which unequivocally held that "disgorgement is an available remedy under the Martin Act and the Executive Law." People v Greenberg, 27 NY3d 490, 497 (2016).

Also fatally flawed is defendants' reliance on People v Frink Am., Inc., 2 AD3d 1379, 1380 (4th Dept 2003), as it relies on the outdated proposition that Executive Law § 63(12) "does not create any new causes of action" and thus, the remedy of disgorgement is unavailable. NYSCEF Doc. No. 835 at 73-74. However, in Trump Entrepreneur Initiative, in which at least three of the instant defendants were parties, the First Department unambiguously declared that "the Attorney General is, in fact, authorized to bring a cause of action for fraud under Executive Law § 63(12)." Trump Entrepreneur Initiative at 418; see also People v Pharmacia Corp., 27 Misc 3d 368, 373 (Sup Ct, NY County 2010) (holding "Executive Law § 63(12) applies to fraudulent conduct actionable at common law, as well as to conduct for which liability arises solely from the statute").

Defendants incorrectly posit that, under People v Ernst & Young, LLP, 114 AD3d 569 (1st Dept 2014), disgorgement is available under the Martin Act but not under Executive Law § 63(12). NYSCEF Doc. No. 836 at 73. This is simply untrue. In Ernst & Young, the First Department specifically held that disgorgement was an available and potentially "crucial" remedy in an Executive Law § 63(12) action. Ernst & Young at 570.

Defendants correctly assert that "the record is devoid of any evidence of default, breach, late payment, or any complaint of harm" and argue that as none of the recipients of the subject SFCs ever lodged a complaint with OAG or otherwise claimed damages, disgorgement of profits would be inappropriate. NYSCEF Doc. No. 835 at 40.

However, that is completely irrelevant. As the Ernst & Young Court noted:

> [W]here, as here, there is a claim based on fraudulent activity, disgorgement may be available as an equitable remedy, notwithstanding the absence of loss to individuals or independent claims for restitution. Disgorgement is distinct from the remedy of restitution because it focuses on the gain to the wrongdoer as opposed to the loss to the victim. Thus, disgorgement aims to deter wrongdoing by preventing the wrongdoer from retaining ill-gotten gains from fraudulent conduct. Accordingly, the remedy of disgorgement does not require a showing or allegation of direct losses to consumers or the public; the source of the ill-gotten gains is "immaterial."

Id. (disgorgement is not impermissible penalty "since the wrongdoer who is deprived of an illicit gain is ideally left in the position he would have been had there been no misconduct") (internal citations omitted); see also Amazon.com at 130 ("Executive Law § 63(12) authorizes the Attorney General to seek injunctive and other relief", and finding "the Attorney General can seek disgorgement of profits on the State's behalf").

Sanctionable Conduct for Frivolous Motion Practice

In response to both OAG's request for a preliminary injunction and to defendants' motions to dismiss, this Court rejected every one of the aforementioned arguments. In rejecting such arguments for the second time, this Court cautioned that "sophisticated counsel should have known better." [5] NYSCEF Doc. No. 453 at 5. However, the Court declined to impose sanctions, believing it had "made its point." Id.

Apparently, the point was not received.

One would not know from reading defendants' papers that this Court has already *twice* ruled against these arguments, called them frivolous, and *twice* been affirmed by the First Department.

"In its discretion, a court may award costs and financial sanctions against an attorney or party resulting from frivolous conduct." Kamen v Diaz-Kamen, 40 AD3d 937, 937 (2d Dept 2007). See Yan v Klein, 35 AD3d 729, 729–30 (2d Dept 2006) ("The plaintiff, following two prior actions, has 'continued to press the same patently meritless claims,' most of which are now barred by the doctrines of res judicata and collateral estoppel").

Defendants' conduct in reiterating these frivolous arguments is egregious. We are way beyond the point of "sophisticated counsel should have known better"; we are at the point of intentional and blatant disregard of controlling authority and law of the case. This Court emphatically rejected these arguments, as did the First Department. Defendants' repetition of them here is indefensible.

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5 The Court even went so far as to caution that the "arguments were borderline frivolous even the first time defendants made them." NYSCEF Doc. No. 453 at 3.

Pursuant to New York Administrative Code § 130-1.1, "[t]he Court, as appropriate, may make such an award of costs or impose such financial sanctions against either an attorney or a party to the litigation or against both." The provision further states that:

> For purposes of this Part, conduct is frivolous if:
>
> (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
>
> (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
>
> (3) it asserts material factual statements that are false.

22 NYCRR 130-1.1(c). Defendants' inscrutable persistence in re-presenting these arguments clearly satisfies the first of these three possible criteria.

When considering imposing sanctions "[a]mong the factors [the court] is directed to consider is whether the conduct was continued when it became apparent, or should have become apparent, that the conduct was frivolous, or when such was brought to the attention of the parties or to counsel." Levy v Carol Mgmt. Corp., 260 AD2d 27, 34 (1st Dept 1999) (further finding that sanctions both "punish past conduct" and "they are goal oriented, in that they are useful in deterring future frivolous conduct").

In its January 6, 2023 Decision and Order, this Court warned defendants that their "reiteration of [these previously rejected arguments] scattered across five different motions to dismis[s] was frivolous." NYSCEF Doc. No. 453 at 3.

In a last-ditch attempt to stave off sanctions, defendants have submitted an affirmation by the Hon. Leonard B. Austin (ret.), who had a supremely distinguished judicial career, culminating in 12 years on the Appellate Division, Second Department. NYSCEF Doc. No. 1449. Justice Austin presents what is essentially a primer on the interplay between motions to dismiss and motions for summary judgment, and every point of law is valid.

However, it is wholly invalid as a reason for this Court to deny sanctions. First, legal arguments are for counsel to make, not for experts to submit. "The rule prohibiting experts from providing their legal opinions or conclusions is 'so well-established that it is often deemed a basic premise or assumption of evidence law—a kind of axiomatic principle.'" In re Initial Pub. Offering Sec. Litig., 174 F Supp 2d 61, 64 (SD NY 2001) (citing Thomas Baker, The Impropriety of Expert Witness Testimony on the Law, 40 U Kan LRev 325, 352 (1992) (precluding "expert affidavits" on the law); accord, Note, Expert Legal Testimony, 97 Harv LRev 797, 797 (1984) ("it remains black-letter law that expert legal testimony is not permissible"). Neither defendants nor Justice Austin has sought permission to file an amicus brief. In their own submissions, defendants have expounded on the law of capacity, standing, disclaimers, motions to dismiss, motions for summary judgment, and sanctions. The heft and prestige of a legal lion adds nothing.

More importantly, the subject affirmation utterly fails to fit the specific facts of this case into the general principles it enunciates. In many situations, discovery, and a complete record, and the reversal of the burden of proof, will turn the tide, requiring that a valid complaint be dismissed because there is no evidence to support it. But standing and capacity are legal questions, not factual issues. Crucially, while defendants have, by their own account, conducted extensive discovery and have created a complete record, they fail to point to a single fact that discovery has uncovered, let alone a single fact in the record, that changes the calculus of their denied and doomed capacity and standing arguments.

Capacity and standing are not esoteric concepts. Infants, legally declared incompetents, and persons under certain legal disabilities are not allowed to sue. The New York Attorney General is none of the above. If my sibling or neighbor is harmed, I do not have standing to sue for his or her injury. Citizens may not sue to prevent governmental actions unless they may suffer some personal harm. Executive Law § 63(12) was promulgated to give the Attorney General standing to sue on behalf of the people of New York to prevent or deter the precise type of fraud here at issue. Arguments to the contrary are risible.

Defendants' arguments that the factual record developed in discovery changed the landscape under which standing should be viewed is legally preposterous. The best that defendants could muster at oral argument was to contend (incorrectly) that plaintiff cannot sue because the subject transactions were between private entities, and nobody lost money. However, that is purely an argument on the merits, not an argument on standing. Taken to its logical extreme, absolutely any time a defendant denies liability, it could move to dismiss on the ground of lack of standing.

Exacerbating defendants' obstreperous conduct is their continued reliance on bogus arguments, in papers and oral argument. In defendants' world: rent regulated apartments are worth the same as unregulated apartments; restricted land is worth the same as unrestricted land; restrictions can evaporate into thin air; a disclaimer by one party casting responsibility on another party exonerates the other party's lies; the Attorney General of the State of New York does not have capacity to sue or standing to sue (never mind all those cases where the Attorney General has sued successfully) under a statute expressly designed to provide that right; all illegal acts are untimely if they stem from one untimely act; and square footage subjective.

That is a fantasy world, not the real world.

There is also a larger context to the sanctions issue. Several defendants are no strangers to sanctions and why courts are sometimes constrained to issue them. In the investigatory special proceeding this Court found Donald Trump in contempt of Court and sanctioned him $10,000 per day for failing to comply with his discovery obligations. This Court lifted the contempt after 11 days. The First Department affirmed the contempt and the fines. People v Trump, 213 AD3d 503, 504 (1st Dept 2023) ("[T]he financial sanction to compel compliance was a proper exercise of the court's discretionary power and was not excessive or otherwise improper, under the particular circumstances").

In Donald J. Trump v Hillary R. Clinton, 22-14102-CV-DMM, ("Order on Motion for Indicative Ruling") (filed September 15, 2023) (SD FL), Judge Donald M. Middlebrooks denied what in

New York legal parlance would be called "a motion to reargue," pursuant to which Donald Trump asked Judge Middlebrooks to vacate sanctions imposed on him and his legal team totaling close to one million dollars. Judge Middlebrooks wrote, on the first page thereof, that "Movants acted in bad faith in bringing this lawsuit and that this case exemplifies Mr. Trump's history of abusing the judicial process.[6]" Id.

Unfortunately, sanctions are the only way to impress upon defendants' attorneys the consequences of engaging in repetitive, frivolous motion practice after this Court, affirmed by the Appellate Division, expressly warned them against doing so. Boye v Rubin & Bailin, LLP, 152 AD3d 1, 11 (1st Dept 2017) ("sanctions serve to deter future frivolous conduct" and their "goals include preventing the waste of judicial resources, and deterring vexatious litigation and dilatory or malicious litigation tactics").

It is of no consequence whether the arguments were made at the direction of the clients or *sua sponte* by the attorneys; counsel are "ethically obligated to withdraw any baseless and false claims, if not upon [their] own review of the record, certainly by the time [the] Supreme Court advised [them] of this fact." Boye at 11 (upholding sanctions against attorneys because "counsel continued to… pursue claims which were completely without merit in law or fact."); see also Nachbaur v Am. Transit Ins. Co., 300 AD2d 74, 75 (1st Dept 2002) (motion court properly sanctioned attorneys for "repetitive and meritless motions"); Leventritt v Eckstein, 206 AD2d 313, 314 (1st Dept 1994) (affirming sanctions imposed on attorney for "repeated pattern of frivolous conduct"); William Stockler & Co. v Heller, 189 AD2d 601, 603 (1st Dept 1993) (affirming sanctions against attorney upon finding "there was no factual or legal basis for defendant's original cross motion, or for the reargument motion, that both motions were 'totally frivolous' and were submitted 'just really to delay'"). Counsel should be the first line of defense against frivolous litigation.

Accordingly, this Court grants OAG's motion for sanctions, in part, to the extent of sanctioning each of defendants' attorneys who signed their names to the instant legal briefs[7], in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Order.

Arguments Defendants Raise for the First Time

Summary Judgment Standard

To prevail on its motion for summary judgment on all causes of action, defendants must first "make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient

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[6] One factor Judge Middlebrooks considered was Donald Trump's "disregard for legal principles and precedent." Id. at 14. In short, Donald Trump, and his lawyers, are not sanctions neophytes. This is not their first rodeo.

[7] The following attorneys signed their names to defendants' instant briefs and are, accordingly, sanctioned $7,500 each: Michael Madaio, Esq. (Habba Madaio & Associates, LLP); Clifford S. Robert, Esq. (Robert & Robert PLLC); Michael Farina Esq. (Robert & Robert PLLC); Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC); and Armen Morian (Morian Law PLLC).

evidence to eliminate any material issues of fact from the case." Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 (1985). "Failure [of the movant] to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers." Id. If the defendants make out their prima facie showing, the burden then shifts to plaintiff to offer evidence sufficient to rebut that showing by identifying disputed issues of fact that should go before a trier of fact.

Defendants strenuously argue throughout their briefs that OAG has not met her burden sufficient to defeat defendants' motion for summary judgment. However, defendants misstate the black letter law applicable to summary judgment, citing to City Dental Servs., P.C. v New York Cent. Mut., 34 Misc 3d 127(A) (App Term 2d, 11th, 13th Jud Dists 2011) for the flatly wrong proposition that "in order to defeat summary judgment on these claims of predicate illegality, the NYAG must, with respect to each predicate illegality attached, 'establish[] each element of its cause with respect to those causes of action.'" NYSCEF Doc. No. 835 at 62.

Not only does City Dental not stand for that proposition (it merely found that under the circumstances of that case, plaintiff's evidence failed to meet her burden on summary judgment), but the law is well-settled that "to defeat a motion for summary judgment the opposing party must 'show facts sufficient to require a trial of any issue of fact," not make out its own case. Zuckerman v City of New York, 49 NY2d 557, 562 (1980). While OAG must establish each and every element of its cause(s) of action in order to *prevail* on its own motion for summary judgment, in order to defeat defendants' motion for summary judgment (provided defendants are able to demonstrate a prima facie case) "an opposing party must 'show facts sufficient to require a trial of any issue of fact.'" Guzman v Strab Const. Corp., 228 AD2d 645, 646 (2d Dept 1996) ("evidentiary facts derived from the documents submitted [in opposition to summary judgment motion] are sufficient to present a triable issue of fact").

The "Worthless Clause"

Defendants rely on what they call a "worthless clause" set forth in the SFCs under the section entitled "Basis of Presentation" that reads, as here pertinent, as follows:

> Assets are stated at their estimated current values and liabilities at their estimated current amounts using various valuation methods. Such valuation methods include, but are not limited to, the use of appraisals, capitalization of anticipated earnings, recent sales and offers, and estimates of current values as determined by Mr. Trump in conjunction with his associates and, in some instances, outside professionals. Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates presented herein are not necessarily indicative of the amount that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts.

NYSCEF Doc. Nos. 769 at 7; 770 at 7; 771 at 7; 772 at 7; 773 at 7.

In his sworn deposition, Donald Trump spent a lot of time invoking this clause: "Well, they call it a 'disclaimer.' They call it 'worthless clause' too, because it makes the statement 'worthless.'" NYSCEF Doc. No. 859 at 67. Donald Trump goes on to say that "I have a clause in there that says, don't believe the statement, go out and do your own work. This statement is 'worthless.' It means nothing." Id. at 68. Furthermore, Donald Trump implies that he did not consider it important to review the SFCs for accuracy because of the existence of this purported "worthless clause":

> OAG: Does this refresh your recollection of the process whereby you would get final review of the Statement of Financial Condition?
>
> DJT: Yeah, I think generally. It's interesting. I would say as years went by, I got less and less and then once I became President, I would – if I saw it at all, I'd see it, you know, after it was already done.
>
> OAG: So in the period –
>
> DJT: Again, you know, I hate to be boring and tell you this. When you have the worthless clause on a piece of paper and the first – literally the first page you're reading about how this is a worthless statement from the standpoint of your using it as a bank or whatever –whoever may be using it, you tend not to get overly excited about it. I think it had very little impact, if any impact on the banks.
>
> ....
>
> OAG: So am I understanding that you didn't particularly care about what was in the Statement of Financial Condition?
>
> DJT: I didn't get involved in it very much. I felt it was a meaningless document, other than it was almost a list of my properties, with good faith effort of people trying to put some value down. It was a good faith effort.

Id. at 107-108. Defendants further submit the affidavit and deposition transcript of Robert Unell, who purports to be an expert in commercial real estate, for the proposition that because of "the worthless clause" in the SFC, "no lender relies on these for what it is." NYSCEF Doc. Nos. 1030 at 183-184; 1031.

However, defendants' reliance on these "worthless" disclaimers is worthless. The clause does not use the words "worthless" or "useless" or "ignore" or "disregard" or any similar words. It does not say, "the values herein are what I think the properties will be worth in ten or more years." Indeed, the quoted language uses the word "current" no less than five times, and the word "future" zero times.

Additionally, as discussed *supra*, a defendant may not rely on a disclaimer for misrepresentation of facts peculiarly within the defendant's knowledge. Basis Yield Alpha Fund at 136. Here, as the valuations of the subject properties are, obviously, peculiarly within defendants' knowledge, their reliance on them is to no avail.

Furthermore, "[t]his 'special facts doctrine' applies *regardless of the level of sophistication of the parties*." TIAA Glob. Invs. LLC v One Astoria Square LLC, 127 AD3d 75, 87 (1st Dept 2015) (emphasis added) (holding disclaimer does not bar liability for fraud where facts were peculiarly within disclaiming party's knowledge).

Thus, the "worthless clause" does not say what defendants say it says, does not rise to the level of an enforceable disclaimer, and cannot be used to insulate fraud as to facts peculiarly within defendants' knowledge, even vis-à-vis sophisticated recipients.

The Tolling Agreement

The First Department has declared that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and claims against defendants not subject to the tolling agreement are timely if they accrued after February 6, 2016. Trump, 217 AD3d at 611. Defendants concede that the tolling agreement binds each of the LLC-defendants and the Trump Organization. However, they argue that each of the individual defendants and the Donald J. Trump Revocable Trust (the "DJT Revocable Trust") are not bound by the agreement.

Alan Garten, the Trump Organization's Chief Legal Officer, originally entered into the tolling agreement on behalf of "the Trump Organization" on August 27, 2021; the agreement was extended one time by an amendment dated May 3, 2022. NYSCEF Doc. No. 1260. It tolls the statute of limitations for the period from November 5, 2020, through May 31, 2022. Id. at 2. The agreement contains a footnote to the entity "the Trump Organization" that reads as follows:

> As noted in the December 7, 2019 subpoena issued in this investigation to the Trump Organization, the "Trump Organization" as used herein includes The Trump Organization, Inc; DJT Holdings LLC; DJT Holdings Managing Member LLC; and any predecessors, successors, present or former parents, subsidiaries, and affiliates, whether direct or indirect; and all directors, officers, partners, employees, agents, contractors, consultants, representatives, and attorneys of the foregoing, and any other Persons associated with or acting on behalf of the foregoing, or acting on behalf of any predecessors, successors, or affiliates of the foregoing.

Id. at 4 n 1.

Thus, the tolling agreement at issue here binds "all directors [and] officers" and "present or former parents" of the Trump Organization and its affiliates and subsidiaries. Id. It is undisputed that at the time the tolling agreement was executed, each individual defendant, Donald J. Trump, Donald Trump Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney,

were all directors and/or officers of the Trump Organization. NYSCEF Doc. No. 1293 at ¶¶ 673, 680, 696, 710, 736.

Defendants argue that the non-signatory defendants are not bound by the agreement, citing Highland Crusader Offshore Partners, L.P. v Targeted Delivery Techs. Holdings, Ltd., 184 AD3d 116, 121 (1st Dept 2020), for the "general principal that only the parties to a contract are bound by its terms." NYSCEF Doc. No. 835 at 27. However, defendants fail to quote the following sentence, which provides that "[a] non-signatory may be bound by a contract under certain limited circumstances." Highland at 122. See also Oberon Sec., LLC v Titanic Ent. Holdings LLC, 198 AD3d 602, 603 (1st Dept 2021) (non-signatory companies bound by agreement with language defining signatory to include "all subsidiaries, affiliates, [and] successors").

In People v JUUL Labs, Inc., 212 AD3d 414, 417 (1st Dept 2023), in a case involving nearly identical language in a corporate tolling agreement[8], the First Department recently held that non-signatory corporate affiliates, officers, and directors were bound by the agreement. Similarly, here all the individual defendants are bound by the instant tolling agreement's terms and may be held liable for any claims that accrued after July 13, 2014.

Defendants argue that OAG is judicially estopped from asserting that the agreement binds the individual defendants based on statements OAG's counsel made during oral argument in the investigatory special proceeding. NYSCEF Doc. No. 1292 at 26. Specifically, on April 25, 2022, while seeking to hold Donald Trump in contempt for failing to comply with court orders, OAG's counsel stated: "[t]here is hard prejudice because Donald Trump is not a party to the tolling agreement, that tolling agreement only applies to the Trump Organization." NYSCEF Doc. No. 1041 at 59.

For judicial estoppel to be applicable: "First, the party against whom the estoppel is asserted must have argued an inconsistent position in a prior proceeding; and second, the prior inconsistent position must have been adopted by the court in some manner." Bates v Long Island R. Co., 997 F2d 1028, 1038 (2d Cir 1993).

Defendants are correct that the first prong is satisfied, in that the statements OAG's counsel made during oral argument are inconsistent with the position OAG is now taking. However, defendants cannot demonstrate that this Court adopted the prior position. Indeed, this Court did not need to, and did not, consider the tolling agreement when it issued its April 26, 2022 Decision and Order finding Donald Trump in contempt. See Ghatani v AGH Realty, LLC, 181 AD3d 909, 911 (2d Dept 2020) ("For the doctrine [of judicial estoppel] to apply, there must be a final determination endorsing the party's inconsistent position in the prior proceeding").

This Court has not addressed the tolling agreement until now. Accordingly, defendants cannot demonstrate that this Court adopted OAG's prior inconsistent position.

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[8] The substantially similar tolling agreement at issue in Juul can be found under Index No. 452168/2019, NYSCEF Doc. No. 176.

Moreover, "[t]he party asserting estoppel must show with respect to himself: '(1) lack of knowledge of the true facts; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change in his position.'" BWA Corp. v Alltrans Exp. U.S.A., Inc., 112 AD2d 850, 853 (1st Dept 1985). Here, none of the defendants claim that they changed their positions or courses of conduct in reliance upon the statement of OAG's counsel during oral argument.

Finally, while judicial estoppel may be applied to prohibit inconsistent changes in factual positions, courts have declined to extend the doctrine to changes in legal positions. Seneca Nation of Indians v New York, 26 F Supp 2d 555, 565 (WD NY 1998), affd, 178 F3d 95 (2d Cir 1999) (finding "[t]here is no legal authority" for "broadening of the doctrine" to "include seemingly inconsistent legal positions"). Who physically signed the agreement is a question of fact; whom it binds is a question of law.

Defendants' argument that the DJT Revocable Trust is not bound by the tolling agreement falls flat. In his deposition, Donald Trump affirmed under oath that the assets of the Trump Organization are held in the DJT Revocable Trust, for which he is the sole donor and beneficiary. NYSCEF Doc. No. 859 at 21. Donald Trump also affirmed that at the time the trust was formed, he was the sole trustee and remained the sole trustee until 2017, when defendants Allen Weisselberg and Donald Trump, Jr. became the sole trustees. Id. at 20-24.

As every beneficiary, donor, and trustee of the DJT Revocable Trust is a defendant bound by the tolling agreement, and as the trust is unquestionably a "parent" of the Trump Organization, so too does the tolling agreement bind the DJT Revocable Trust. See People v Leasing Expenses Co. LLC, 199 AD3d 521, 522 (1st Dept 2021) ("It may likewise be inferred that the trustees had knowledge of the activities of the businesses they controlled through the trust mechanism. Hence, under Executive Law § 63(12), the family trusts and trustees may likewise be held liable for the fraud"); see e.g., Kurzman v Graham, 12 Misc 3d 586, 590 (Sup Ct, NY County 2006) ("courts will not allow the owner of assets to evade creditors by placing the property in a trust while retaining a right to revoke the trust").

Defendants cite to New York Estates, Powers and Trust Law § 11-1.1(b)(17) for the proposition that only a trustee may bind a trust to an agreement. However, § 11-1.1(b)(17) does not state this; rather, it states:

> (b) In the absence of contrary or limiting provisions in the court order or decree appointing a fiduciary, or in a subsequent order or decree, or in the will, deed or other instrument, every fiduciary is authorized:
> ...
> (17) To execute and deliver agreements, assignments, bills of sale, contracts, deeds, notes, receipts and any other instrument necessary or appropriate for the administration of the estate or trust.

This provision simply says what a fiduciary is permitted to do in the absence of a contrary provision. It does nothing to advance defendants' argument that *only* a trustee may bind a trust,

particularly since defendants fail to cite to any provision of the DJT Revocable Trust restricting who can bind it, as § 11-1.1(b)(17) anticipates.

Moreover, Korn v Korn, 206 AD3d 529, 530 (1st Dept 2022), upon which defendants inexplicably rely, is irrelevant to the instant analysis, as that case involved an examination by the court as to whether a fiduciary had a right or duty to negotiate on behalf of an estate pursuant to § 11-1.1(b)(13), not pursuant to § 11-1.1(b)(17), to which defendants cite.

Finally, "the Attorney General should not be limited, in [her] duty to protect the public interest, by an… agreement [s]he did not join." People v Coventry First LLC, 13 NY3d 108, 114 (2009) (holding Attorney General not bound by arbitration agreement when pursuing Executive Law § 63(12) claim and finding "[s]uch an arrangement between private parties cannot alter the Attorney General's statutory role or the remedies that [s]he is empowered to seek").

The tolling agreement was a mutually beneficial and common arrangement pursuant to which OAG agreed to hold off suing, and Alan Garten, on behalf of the Trump Organization, agreed to toll the statute of limitations. All defendants received the benefit of the bargain; OAG held off suing. OAG is entitled to its benefit of the bargain, the tolling of the statute of limitations, for the limited agreed-upon time, as against anyone it could have sued for the matters at issue at the time at which the agreement was executed. OAG clearly did not intend to permit defendants' principals to evade the tolling agreement based on a technicality contrary to the spirit of the agreement and controlling caselaw.

Statute of Limitations

As a general rule, statutes of limitation start running when a claim accrues, that is, when it can be sued upon. In arguing that OAG's causes of action are untimely, defendants incorrectly assert that the statute of limitations starts running on the date the parties entered into the subject agreements, or when the loans closed. However, the First Department did not use the word "closed," it used the word "completed." Trump, 217 AD3d at 611. Obviously, the transactions were not "completed" while the defendants were still obligated to, and did, annually submit current SFCs to comply with the terms of the loan agreements.

Defendants further assert that any continuing documentation provided after the agreements were entered into, or when the loans closed, is of no consequence if the proceeds were distributed prior to July 2014. NYSCEF Doc. No. 835 at 18. This argument is unavailing. As OAG asserts, each submission of an SFC after July 13, 2014, constituted a separate fraudulent act. Indeed, each submission of a financial document to a third-party lender or insurer would "requir[e] a separate exercise of judgment and authority," triggering a new claim. Yin Shin Leung Charitable Found. v Seng, 177 AD3d 463, 464 (1st Dept 2019) (finding continuous series of wrongs each of which gave rise to its own claim).

Defendants mistakenly assert that if a loan agreement was entered into and its proceeds were dispersed prior to the applicable statute of limitations, then a claim arising out of submitting any subsequent contractually required financial documentation is also untimely, irrespective of when that documentation is submitted. Defendants would have this Court apply a bizarre, invented, inverted form of the "relation back" doctrine, pursuant to which if one aspect of fraudulent

business conduct falls outside the statute of limitations, then all subsequent aspects of fraudulent conduct also fall outside the statute, no matter how inextricably intertwined.

Of course, this is contrary to controlling case law, which holds that a cause of action accrues at the time "when one misrepresents a material fact." Graubard Mollen Dannett & Horowitz v Moskovitz, 86 NY2d 112, 12 (1995). Moreover, even the plain language of Executive Law § 63(12) states: "[t]he term 'repeated' as used herein shall include repetition of any *separate and distinct fraudulent or illegal act*" (emphasis added). Clearly, the submission of each separate fraudulent SFC is a distinct fraudulent act.

OAG is not challenging the loans, the closings, or the disbursements; it is challenging defendants' submissions of financial documents containing false and misleading information. Thus, any SFC that was submitted after July 13, 2014, falls within the applicable statute of limitations. CW Capital Cobalt VR Ltd. v CW Capital Invs., LLC, 195 AD3d 12, 19-20 (1st Dept 2021) (each instance of wrongful conduct a "separate, actionable wrong" giving "rise to a new claim").

Materiality

It is settled that a standalone cause of action under Executive Law § 63(12) does not require a demonstration of materiality but merely that an "act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." People v Gen. Elec. Co., 302 AD2d 314, 314-315 (1st Dept 2003) (holding that, unlike GBL § 349, plaintiff need not prove "the challenged act or practice 'was misleading in a material way'").

Although the Domino's court found that "evidence regarding falsity, materiality, reliance and causation plainly is *relevant* to determining whether the Attorney General has established that the challenged conduct has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud" (Domino's at 11), every Appellate Division and the New York Court of Appeals now hold that materiality and scienter are not requirements for liability under § 63(12).

However, as discussed *infra*, although materiality is required under the second through seventh causes of action, it is not required under a standalone cause of action under Executive Law § 63(12), the OAG's first cause of action.

Defendants argue that the SFCs were not materially misleading, claiming, *inter alia* that: (1) "[t]here is no such thing as objective value"; (2) "a substantial difference between valuation in the SOFCs and appraisal, per se, is not evidence of inflated values"; (3) there is nothing improper about using "fixed assets" valuations as opposed to using the current market valuation approach; and (4) it was proper to include "internally developed intangibles, such as the brand premium used in the valuation of President Trump's golf clubs, in personal financial statements." NYSCEF Doc No. 1292 at 20-23.

Thus, defendants essentially argue that value is inherently subjective; that because internal brand valuations are in the eye of the beholder (here, Donald Trump), they cannot be overvalued. Defendants argue that "[n]o bank or underwriter would have reasonably been materially misled by the alleged misstatements or omissions in the SOFCs and other information the Defendants

made available to their counterparties because no sophisticated counterparty would have considered the SOFCs and other information provided by the Defendants alone as material to extend credit or set an interest rate, or issue an insurance policy or price a risk, without doing their own due diligence." NYSCEF Doc. No. 835 at 45.

Defendants also argue: "[i]t follows that if the user [of the SFCs] is in possession of the correct information, then the financial statements are not materially misstated." Id. at 39. Defendants' stance is, practically speaking, that they may submit false SFCs so long as the recipients know, from their own due diligence, that the information is false.

Accepting defendants' premise would require ignoring decades of controlling authority holding that financial statements and real property valuations are to be judged objectively, not subjectively. FMC Corp. v Unmack, 92 NY2d 179, 191 (1998) ("*objectively* reasonable conclusion, drawn by a competent and experience appraiser, was based on credible evidence" that demonstrated "property was overvalued") (emphasis added); Assured Guar. Mun. Corp. v DLJ Mortg. Cap. Inc., 44 Misc 3d 1206(A) (Sup Ct, NY County 2014) ("Credit Suisse is reading this as a subjective standard, dependent on Assured's expectations. Credit Suisse is wrong. It is well settled that this is an objective standard").

Moreover, courts have long found that "generally, it is the 'market value' which provides the most reliable valuation for assessment purposes." Great Atl. & Pac. Tea Co. v Kiernan, 42 NY2d 236, 239 (1977); Consol. Edison Co. of New York v City of New York, 33 AD3d 915, 916 (2d Dept 2007) ("the standard for assessment remains market value"), affd 8 NY3d 591. Beauty may be in the eye of the beholder, but value is in the eye of the marketplace.

Further, defendants' assertion that the discrepancies between their valuations and the OAG's are immaterial is nonsense. What OAG has established, in many cases by clear, indisputable documentary evidence (as discussed *infra*), is not a matter of rounding errors or reasonable experts disagreeing. OAG has submitted conclusive evidence that between 2014 and 2021, defendants overvalued the assets reported in the SFCs between 17.27-38.51%; this amounts to a discrepancy of between $812 million and $2.2 billion dollars. NYSCEF Doc. No. 766 at 70. Even in the world of high finance, this Court cannot endorse a proposition that finds a misstatement of at least $812 million dollars to be "immaterial." Defendants have failed to identify any authority for the notion that discrepancies of the magnitude demonstrated here could be considered immaterial.

The Second through Seventh Causes of Action

The Second, Third, Fourth, Fifth, Sixth, and Seventh causes of action allege violations of Executive Law § 63(12) based on underlying violations of the New York Penal Law prohibiting falsification of business records, issuance of false financial statements, and insurance fraud.

Liability under New York Penal Law § 175.05 (falsifying business records in the second degree) requires that a person "[m]akes or causes a false entry in the business records of an enterprise."

Liability under New York Penal Law § 175.45 (issuing a false financial statement) requires that a person "represents in writing that a written instrument purporting to describe a person's financial

condition or ability to pay as of a prior date is accurate with respect to such person's current financial condition or ability to pay, whereas [that person] knows it is materially inaccurate in that respect."

Liability under New York Penal Law § 176.05 (insurance fraud) requires that a person submitted an application for insurance either: (1) knowing that it "contain[ed] materially false information concerning any fact material thereto"; or (2) "conceal[ed], for the purpose of misleading, information concerning any fact material thereto."

Accordingly, unlike a standalone cause of action under Executive Law § 63(12). the second through seventh causes of action require demonstrating some component of intent and materiality. People v Alamo Rent A Car, Inc., 174 Misc 2d 501, 505 (Sup Ct, NY County 1997) ("As in all other situations requiring *mens rea*, however, petitioners may prove, by reference to facts and circumstances surrounding the case, that respondents knew that their conduct was unlawful. Moreover, petitioners need not prove respondents acted with an 'evil motive, bad purpose or corrupt design'") (internal citations omitted).

OAG has demonstrated that there remain, at the very least, disputed issues of fact as to whether defendants violated these statutes, intentionally and materially. Thus, there are issues of fact as to causes of action two through seven that require a trial.

The Court has considered defendants' remaining arguments and finds them to be unavailing and/or non-dispositive.

Accordingly, defendants' motion for summary judgment dismissing every cause of action is denied in its entirety.

OAG'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ITS FIRST CAUSE OF ACTION

Summary Judgment Burden on Standalone Executive Law § 63(12) Cause of Action

OAG moves for partial summary judgment, seeking to hold defendants liable under OAG's first cause of action, for fraud under Executive Law § 63(12).

As this Court has noted *ad nauseum*, Executive Law § 63(12) "authorizes the Attorney General to bring a special proceeding against any person or business that engages in repeated or persistent fraudulent or illegal conduct, while broadly construing the definition of fraud so as to include acts characterized as dishonest or misleading and eliminating the necessity for proof of an intent to defraud." People v Apple Health & Sports Club, Ltd., Inc., 206 AD2d 266-267 (1st Dept 1994).

As OAG's first cause of action, the only one upon which it moves for summary judgment, alleges a standalone violation of Executive Law § 63(12), OAG need only prove: (1) the SFCs were false and misleading; and (2) the defendants repeatedly or persistently used the SFCs to transact business.

This instant action is essentially a "documents case." As detailed *infra,* the documents here clearly contain fraudulent valuations that defendants used in business, satisfying OAG's burden to establish liability as a matter of law against defendants. Defendants' respond that: the documents do not say what they say; that there is no such thing as "objective" value; and that, essentially, the Court should not believe its own eyes.[9]

The defenses Donald Trump attempts to articulate in his sworn deposition are wholly without basis in law or fact. He claims that if the values of the property have gone up in the years since the SFCs were submitted, then the numbers were not inflated at that time (i.e.; "But you take the 2014 statement, if something is much more valuable now – or, I guess, we'll have to pick a date which was a little short of now. But if something is much more valuable now, then the number that I have down here is a low number"). NYSCEF Doc. No. 1363 at 69-75). He also seems to imply that the numbers cannot be inflated because he could find a "buyer from Saudi Arabia" to pay any price he suggests.[10] Id. at 30-33, 60-62, 79-80.

The Trump Tower Triplex

This Court takes judicial notice that the Trump Tower apartment in which Donald Trump resided for decades (the "Triplex") is 10,996 square feet. NYSCEF Doc. No. 816 at 2. Between 2012-2016, Donald Trump submitted SFCs falsely claiming that the Triplex was 30,000 square feet, resulting in an overvaluation of between $114-207 million dollars. NYSCEF Doc. Nos. 782 at Rows 833-834, 1028, 783 at Rows 799-800, 1199, 784 at Rows 843-844, 785 at Rows 882-883, 789 at Row 913, 817. The misrepresentation continued even after defendants received written notification from *Forbes* that Donald Trump had been overestimating the square footage of the Triplex by a factor of three.[11]

In opposition, defendants absurdly suggest that "the calculation of square footage is a subjective process that could lead to differing results or opinions based on the method employed to conduct the calculation.[12]" NYSCEF Doc. No. 1293 at 20. Well yes, perhaps, if the area is rounded or oddly shaped, it is possible measurements of square footage could come to slightly differing results due to user error. Good-faith measurements could vary by as much as 10-20%, not 200%.

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[9] As Chico Marx, playing Chicolini, says to Margaret Dumont, playing Mrs. Gloria Teasdale, in "Duck Soup," "well, who ya gonna believe, me or your own eyes?"

[10] This statement may suggest influence buying more than savvy investing.

[11] Three days after receiving a written inquiry from *Forbes*, Trump Organization Vice President, Amanda Miller, sent an email to Trump Organization Executive Vice President and Chief Legal Officer, Alan Garten, indicating that she "spoke to Allen W[eisselberg] re: [Trump World Tower and Trump Tower] – we are going to leave those alone." NYSCEF Doc. No. 821. Although OAG need not show intent to deceive under a standalone § 63(12) cause of action, this directive to continue to use a grossly inflated number despite clear knowledge it is false demonstrates the repetitive and ongoing nature of defendants' propensity to engage in fraud.

[12] Despite this assertion in their motion papers, counsel for defendants, Christopher Kise, Esq, conceded during oral argument held on September 22, 2023, that square footage is, in fact, an objective number.

A discrepancy of this order of magnitude, by a real estate developer sizing up his own living space of decades, can only be considered fraud.[13]

OAG unquestionably satisfies its two-prong burden of demonstrating the SFCs from 2012-2016 calculated the value of the Triplex based on a false and misleading square footage, and that some of the defendants repeatedly and persistently used the SFCs to transact business.

Seven Springs Estate

Defendant Seven Springs LLC owns over 200 acres of contiguous land in the towns of Bedford, New Castle and North Castle in Westchester County, New York.

In 2000, non-party the Royal Bank of Pennsylvania appraised the "as is" market value of Seven Springs to be $25 million if converted to residential development. NYSCEF Doc. No. 825. In 2006, the same bank performed a new appraisal, which showed Seven Springs had an "as is" market value of $30 million. NYSCEF Doc. No. 826.

In 2012, Seven Springs LLC received another appraisal that estimated a six-lot subdivision on the New Castle portion of the property to have a fair market value of approximately $700,000 per-lot. NYSCEF Doc. No. 829 at 203-206.

In July 2014, because the Trump Organization was considering donating a conservation easement, it retained Cushman & Wakefield to provide a "range of value" of the Seven Springs property. NYSCEF Doc. Nos. 830, 831. Cushman & Wakefield's appraiser, David McArdle, analyzed the sale of eight lots in Bedford, six lots in New Castle, and ten lots in North Castle and determined the fair market value for all 24 lots was approximately $30 million. NYSCEF Doc. No. 831, 832.

Notwithstanding receiving market values from professional appraisals in 2000, 2006, 2012, and 2014 valuing Seven Springs at or below $30 million, Donald Trump's 2011 SFC reported the value to be $261 million, and his 2012, 2013 and 2014 SFCs reported the value to be $291 million.[14] NYSCEF Doc. Nos. 769, 770, 771, 772.

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[13] In fact, OAG demonstrates that as of 2012, no apartment sold in New York City had ever approached the price at which defendants valued the Triplex, noting that the highest overall sale at that time was $88 million for a Central Park West penthouse. The SFCs valued the Triplex at a staggering $180,000,000-$327,000,000 for the years 2012-2016. NYSCEF Doc. No. 1 at ¶276.

[14] The statutes of limitations have run for all claims that accrued before July 13, 2014. However, although not actionable by themselves, evidence of fraud that predates July 13, 2014, may still be used as evidence in evaluating OAG's request for permanent injunctive relief, wherein the Court must determine whether there has been "a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d 490, 496-97 (2016) (detailing standard for permanent injunctive relief under Executive Law 63(12) and "reject[ing] defendants' arguments that the Attorney General must show irreparable harm in order to obtain a permanent injunction").

In early 2016, Cushman & Wakefield performed another appraisal of Seven Springs, which included the planned development, and determined that as of December 1, 2015, the entire parcel was worth $56.6 million. NYSCEF Doc. Nos. 824 at 9; 875; 876.

Even giving defendants the benefit of the $56.6 million figure as of December 1, 2015, the value submitted on Donald Trump's 2014 SFC was inflated by over 400%. Accordingly, OAG has demonstrated liability for the false 2014 SFC for fraudulently inflating the value of Seven Springs.

Trump Park Avenue

Trump Park Avenue is a residential building included as an asset on Donald Trump's SFCs for the years 2011-2021. NYSCEF Doc. Nos. 769-779. In 2011, 12 of the unsold residential condominium units were subject to New York City's rent regulation laws. NYSCEF Doc. No. 948 at 3. By 2014, nine units remained subject to rent restrictions. NYSCEF Doc. No. 966. By 2020, six units remained subject to rent restrictions. NYSCEF Doc. No. 971.

A 2010 appraisal performed by the Oxford Group valued the 12 rent-stabilized units at $750,000 total, or $62,500 per unit. NYSCEF Doc. No. 952. A 2020 appraisal performed by Newmark Knight Frank valued the six units that remained subject to stabilization at $22,800,090 total, or $3,800,315 per unit. NYSCEF Doc. No. 972.

Notwithstanding, for the years 2014-2021, the Trump Organization submitted SFCs that valued these rent-restricted units as if they were unencumbered, inflating the value of each unit between as much 700% (in 2014) and 64% (in 2021). NYSCEF Doc. Nos. 772-779.

In an unsuccessful attempt to rebut OAG's prima facie demonstration, defendants proffer that the units are not overvalued because "the rent-stabilized units have the potential at some point in the future to be converted into unencumbered (by rent stabilization) units."[15] NYSCEF Doc. No. 1292 at 57. They further concede that "[t]his is the assumption the owner made when assessing potential asset pricing or value." Id.

[15] As every New Yorker knows, rent regulated units may be passed on from one generation to the next in perpetuity.

However, the SFCs are required to state "current" values, not "someday, maybe" values. At the time defendants provided the subject SFCs to third parties they unquestionably falsely inflated the value of the units based on a false premise that they were unrestricted.[16]

40 Wall Street

The Trump Organization, through defendant 40 Wall Street LLC, owns a ground lease at 40 Wall Street and pays ground rent to the landowner.

In 2010, Cushman & Wakefield appraised the Trump Organization's interest in 40 Wall Street at $200 million. NYSCEF Doc. Nos. 878-79. Cushman & Wakefield appraised again in 2011 and 2012, reaching valuations of between $200 and $220 million. NYSCEF Doc. Nos. 881-82. The Trump Organization possessed and was familiar with these appraisals. NYSCEF Doc. Nos. 817 at 135-138; 883.

Despite these appraisals, the 2011 and 2012 SFCs valued the Trump Organization's interest in the property at $524.7 million and $527.2 million, respectively, an overvaluation of more than $300 million each year.[17] NYSCEF Doc. Nos. 769, 770.

In 2015, Cushman & Wakefield once again appraised the property, and valued it at $540 million.[18] NYSCEF Doc. No. 887. Notwithstanding this appraised value, the 2015 SFC listed the value of 40 Wall Street at $735.4 million.[19] NYSCEF Doc. No. 773.

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[16] Mazars accountant Donald Bender testified that when he asked Jeffrey McConney, "Do you have any other appraisals?", Jeffrey McConney stated "I have nothing else," demonstrating an intent to conceal or mislead the accountants. NYSCEF Doc. No. 1262 at 243.

Further, Patrick Birney, a Trump Organization employee working directly under Jeffrey McConney, conceded that the Trump Organization maintained a spreadsheet for day-to-day operations on the Trump Park Avenue offering plan that included both the offering plan prices *and* the current market values, but that the Trump Organization concealed its own actual market estimates from Mazars by omitting the market value column in its spreadsheet and providing Mazars with only the offering plan prices. NYSCEF Doc. No. 946.

[17] Although any liability arising out of the submission of the 2011 and 2012 SFCs is time barred; as previously discussed, these submissions may be considered as evidence in support of OAG's request for injunctive relief.

[18] OAG plausibly asserts that this $540 million is also inflated; however, for purposes of this motion, OAG does not dispute the number, and argues that, even if the Court were to accept defendants' number as accurate, the 2015 SFC was still materially false, as it stated the value as nearly $200 million more than the $540 million appraisal. NYSCEF Doc. No. 766 at n 7.

[19] An email exchange dated August 4, 2014, between Allen Weisselberg and his son, Jack Weisselberg, a Ladder Capital employee, discusses the 2015 $540 million Cushman & Wakefield appraisal. NYSCEF Doc. No. 888. Notwithstanding direct knowledge of it, the 2015 SFC valued 40 Wall Street at nearly $200 million more. NYSCEF Doc. No. 773.

Defendants assert that overvaluations of two hundred million dollars are immaterial, as the "NYAG has produced no evidence to suggest… that Ladder Capital would have been uncomfortable allowing President Trump to guarantee the 40 Wall Street Loan if his net worth was only $1.9 billion, as the NYAG contends." NYSCEF Doc. No. 835 at 48. They further emphasize that "Ladder Capital has received in excess of $40 million in interest and 40 Wall Street LLC has never defaulted under the Loan."[20] Id.

Defendants' argument misses the mark. As has been explained to defendants many times, in many legal proceedings, and in painstaking detail, "where, as here, there is a claim based on fraudulent activity [under Executive Law 63(12)], disgorgement may be available as an equitable remedy, *notwithstanding the absence of loss to individuals or independent claims for restitution.*" Ernst & Young at 569 (emphasis added). Accordingly, it is not significant that the banks made money (or did not lose money)[21], or that they would have done business with the Trump Organization notwithstanding. The law is clear that the only requirements for liability to attach under a standalone Executive Law § 63(12) cause of action are (1) a finding that the SFCs were false and misleading; and (2) that defendants repeatedly or persistently used the SFCs to conduct business.

Accordingly, OAG has demonstrated liability for the false valuation of 40 Wall Street in the 2015 SFC.

Mar-a-Lago

Donald Trump purchased Mar-a-Lago in 1985. In 1993, he sought, and obtained, permission from the Town of Palm Beach to turn the property into a social club (NYSCEF Doc. No. 900), and on August 10, 1993, he entered into a "Declaration of Use Agreement" by which he agreed "the use of Land shall be for a private social club" and that "[a]ny additional uses of the Land shall be subject to approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Landmarks Preservation Commission of the Town, the Architectural Review Commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or any agencies under the foregoing governmental authorities." NYSCEF Doc. No. 915.

In 1995, Donald Trump signed a "Deed of Conservation and Preservation Easement" in which he gave up his right to use Mar-a-Lago for any purpose other than as a social club (the "1995 Deed"). NYSCEF Doc. No. 901. In 2002, Donald Trump signed a "Deed of Development Rights." NYSCEF Doc. No. 902. As part of granting a conversation easement to the National

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[20] The defendant borrowers did not default on any loans; but we only know that with hindsight. Markets are volatile, and borrowers come in all shapes and sizes. The next borrower, or the one after that, might default, and if its SFCs are false, the lender might unfairly be left holding the bag. This will distort the lending marketplace and deprive other potential borrowers of the opportunity to obtain loans and create wealth.

[21] The subject loans made the banks lots of money; but the fraudulent SFCs cost the banks lots of money. The less collateral for a loan, the riskier it is, and a first principal of loan accounting is that as risk rises, so do interest rates. Thus, accurate SFCs would have allowed the lenders to make even more money than they did.

Trust for Historic Preservation, Donald Trump agreed that "Trump intend[s] to forever extinguish [his] right to develop or use the Property for any purpose other than club use" (the "2002 Deed"). The 2002 Deed also specifically "limits changes to the Property including, without limitation, the division or subdivision of the Property for any purpose, including use as single family homes, the interior renovation of the mansion, which may be necessary and desirable for the sale of the Property as a single family residential estate, the construction of new buildings and the obstruction of open vistas." Id. In exchange for granting the easement, Mar-a-Lago was taxed at a significantly lower rate (the club rate) than it otherwise would have been (the private home rate). NYSCEF Doc. No. 903.

From 2011-2021, the Palm Beach County Assessor appraised the market value of Mar-a-Lago at between $18 million and $27.6 million. NYSCEF Doc. No. 905.

Notwithstanding, the SFCs' values do not reflect these land use restrictions. Donald Trump's SFCs for 2011-2021 value Mar-a-Lago at between $426,529,614 million and $612,110,496, an overvaluation of *at least 2,300%*, compared to the assessor's appraisal. NYSCEF Doc. Nos. 769-779.

In an attempt to rebut the OAG's demonstration, defendants rely on the opinion affidavit of Lawrence Moens, who they purport is "the most accomplished and knowledgeable ultra-high net worth real estate broker in Palm Beach, Florida."[22] Moens claims that "the SOFC were and are appropriate and indeed *conservative*." NYSCEF Doc. No. 1292 at 35-36 (emphasis added). The Moens' affidavit states in a conclusory fashion that because he believes "this unique property offers to an elite purchaser the unparalleled opportunity to own an exclusive and extensive family compound in the most desirable sections of Palm Beach… the valuations in the SOFC were reasonable and below my estimate for the market value of the property each year." NYSCEF Doc. No. 1435. Moreover, Moens opines that "[i]f Mar-A-Lago was available for sale, I am confident that in short order, I would be in a position to produce a ready, willing and able buyer who would have interest in securing the property for their personal use as a residence, or even, their own club." Id. at 29. Critically, Moens does not opine *at what price* he is "confident" he could find a buyer (although he opines separately, without relying on any objective evidence, that he believes that as of 2023 the property is worth $1.51 *billion*[23]).

It is well-settled that: "[w]here the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation, however, the opinion should be given no probative force and is insufficient to withstand summary judgment." Diaz v New York Downtown Hosp., 99 NY2d 542, 544 (2002); see also Gardner v Ethier, 173 AD2d 1002, 1003-4 (3d Dept 1991) ("the expert

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[22] At oral argument, his domain of expertise was enlarged to nationwide status.

[23] In his sworn deposition, when asked "[w]ho were the dozen or so [qualified] buyers that you were referencing in your report, Lawrence Moens replied: "I could dream up anyone from Elon Musk to Bill Gates and everyone in between. Kings, emperors, heads of state. But with net worths in the multiple billions. I don't know how many people in the world have a net worth of more than $10 billion, but I think it's quite a number. There are a lot." NYSCEF Doc. No. 1428 at 184-185. Obviously, this Court cannot consider an "expert affidavit" that is based on unexplained and unsubstantiated "dream[s]."

affidavit is also inadmissible because it is conclusory and the views are apparently based to a great extent on hearsay statements from unspecified witnesses as well as upon speculations on the part of the expert"). Accordingly, defendants' reliance on the Moens affidavit is unpersuasive and certainly insufficient to rebut OAG's prima face case.

Defendants further imply that they may ignore the plain language of the 2002 Deed restrictions because they would likely be able to use the Florida judicial system to get out of their contractual requirements; they further assert that because they may successfully breach their contract in the future, they were not required to consider the restrictions of the 2002 Deed when valuing the property. NYSCEF Doc. 1292 at 48-51. This argument is wholly without merit. At the time in which the defendants submitted the SFCs, the restrictions were in effect, and any valuations represented to third-parties must have incorporated those restrictions; failure to do so is fraud. Assets values that disregard applicable legal restrictions are by definition materially false and misleading.

Accordingly, OAG has demonstrated liability for the false valuation of Mar-a-Lago as appears in the SFCs from 2014-2021.

Aberdeen

The Trump Organization owns a golf course located in Aberdeen, Scotland ("Aberdeen"). The value assigned to Aberdeen was comprised of two parts: a value for the golf course and a value for the development of the non-golf course property, the latter of which is the focus here. Developing any of the non-golf course property required that the local Scottish authorities approve any proposed plans.

From 2011-2014, Donald Trump's SFC reported that he had "received outline planning permission [from local Scottish authorities] in December 2008 for… a residential village consisting of 950 holiday homes and 500 single family residences and 36 golf villas." NYSCEF Doc. Nos. 769-776.

The Trump Organization had "outline planning permission" to build a total of 1,486 homes. Notwithstanding, the 2014-2018 SFCs valuations of Aberdeen assumed the Trump Organization had received approval to build 2,500 homes, despite never having received such approval. NYSCEF Doc. Nos. 772-776, 907.

Additionally, the approval of the 950 holiday homes and 36 golf villas came with severe restrictions on their use: they could be used solely as rental properties and could be rented for no more than 12 weeks in any calendar year. NYSCEF Doc. No. 908 at 13. The Trump Organization submitted financial documentation to the local Scottish authorities representing that these short-term rentals would not be profitable and therefore would not add any value to Aberdeen. NYSCEF Doc. Nos. 909 at 36, 910 at 7. Consequently, the only profitable development of Aberdeen would have been the 500 single family residences. In July 2017, non-party Ryden LLP, acting on behalf of the Trump Organization, prepared a development appraisal for Aberdeen wherein it assessed the profit from developing 557 homes and estimated profits in the range of £16,525,000-£18,546,000. NYSCEF Doc. No. 1231 at 10.

In May 2018, the Trump Organization applied to the Aberdeen City Council to reduce the scope of the development project to 550 dwellings, consisting of 500 private residences, 50 leisure/resorts units, and zero holiday homes (having determined they were not profitable). NYSCEF Doc. No. 911. In September 2019, the Aberdeen City Council approved the proposal for a reduction in the proposed development, but restricted the 50 leisure/resort units, as they had the holiday homes, to be "occupied on a holiday letting or fractional ownership basis only and for no other purposes whatsoever including use as a permanent residential unit… ." NYSCEF Doc. No. 907 at 7.

Notwithstanding, the 2019 SFC, finalized a month after the latest approval, derived a value based on the assumption that 2,035 private residential homes could be developed. Adjusting the values to reflect the permissible 500 private residences reduces the value of the Aberdeen undeveloped property as reflected in the 2019 SFC by £164,196.704. NYSCEF Doc. No. 777 at 16, 789 at Cells G561-619, 912.

Although defendants wholly fail to address Aberdeen in any of their three memos of law, in their response to OAG's statement of material facts, they state that "Defendants dispute the veracity of the appraisal because President Trump, as a land developer, took optimistic views of potential future value which is not contemplated in the appraisal, thereby undervaluing Trump Aberdeen." NYSCEF Doc. No. 1293 at 82-83. For all the reasons discussed *supra*, this defense fails.

Accordingly, OAG has demonstrated liability for the false valuation of Aberdeen as appears in the SFCs from 2014-2019.

US Golf Clubs

Donald Trump owns or leases a number of golf clubs across the United States and abroad that are included as assets on his SFCs. NYSCEF Doc. Nos. 769-779. The value for these golf clubs is provided in the aggregate in the SFCs, although supporting accounting spreadsheets evidence the breakdown of the values assigned to each club. NYSCEF Doc. Nos. 781-791.

The "Trump Brand Premium"

The evidence indicates that for the years 2013-2020, the SFCs relied on values that included a 15% or 30% "premium" based on the "Trump brand" for the following seven golf clubs: Trump National Golf Course ("TNGC") Jupiter, TNGC LA, TNGC Colts Neck, TNGC Philadelphia, TNGC DC, TNGC Charlotte, and TNGC Hudson Valley. NYSCEF Doc. Nos. 783-790. However, the SFCs for those years (and, indeed, all the years before this Court), also contained express language stating: "The goodwill attached to the Trump name has significant value that has *not* been reflected in the preparation of this financial statement." NYSCEF Doc. Nos. 769-779 (emphasis added). Accordingly, the SFCs "double dip," both purporting not to include a brand premium while simultaneously including one of 15% or 30%.

In opposition, defendants submit the affidavit of Eli Bartov, an accounting professor at New York University, who distinguishes between overall brand value and brand value ascribed to individual golf courses. His point, ensconced in numerous lines of academic jargon, seems to be that defendants said that they were eschewing the former and opting only for the latter. NYSCEF Doc. No. 1378 at 14-15. This is a red herring and factually incorrect. The SFCs

clearly state that they do not include a brand value for *any* of the properties included in the SFCs; indeed, the SFCs emphatically declare that "[t]he goodwill attached to the Trump name has significant financial value *that has not been reflected in the preparation of this financial statement*." NYSCEF Doc. Nos. 769-779 (emphasis added). Perhaps Donald Trump could have ascribed a brand value to golf courses that he viewed as "special," but he was obligated to disclose those exceptions when he represented that the SFCs did not reflect his brand value.

TNGC Briarcliff and TNGC LA

The valuations of TNGC Briarcliff and TNGC LA were each comprised of a value for the golf course and a value for the undeveloped land. As the Trump Organization was considering donating a conservation easement over both properties, they had both properties appraised.

An April 2014 appraisal valued the golf club portion of TNGC Briarcliff at $16,500,000; later that same year, Donald Trump valued the golf club portion of TNGC Briarcliff at $73,430,217, *an inflation of more than 300%*, in his SFC. NYSCEF Doc. Nos. 923 at 147; 785 at Row 257. A 2015 appraisal valued the golf club portion of TNGC LA at $16,000,000 as of December 26, 2014; the 2015 SFC valued the golf club portion of TNGC LA at $56,615,895, *an inflation of more than 200%.* NYSCEF Doc. Nos. 924 at 151; 785 at Row 386.

In an attempt to rebut this strong showing of fraud, defendants argue that they were not obligated to use market value, but, instead, were permitted to use the "fixed assets" approach to valuation, pursuant to which defendants may "value" a property by aggregating the money spent to acquire and maintain a property. NYSCEF Doc. No. 1292. They further rely on the Bartov affidavit, which states, in wholly conclusory fashion that: "[t]he assertion that 'Using fixed assets approach does not present the golf clubs at their estimated current value because the approach ignores market conditions and the behavior of informed buyers and sellers' is unsubstantiated and false." NYSCEF Doc. No. 1378 at 29.

Bartov is incorrect. Each of the corresponding SFCs include representations that "[a]ssets are stated at their estimated current values…" NYSCEF Doc. Nos. 769-779.[24] Accordingly, it is false and misleading to use a fixed-assets evaluation, which is completely different. The price for which you purchase property is not necessarily the price for which you can sell it. The latter, not the former, matters to lenders who want adequate collateral.

The Membership Liabilities

As part of the purchase of several of the golf club properties, Donald Trump agreed to assume the obligation to pay back refundable non-interest-bearing long-term membership deposits. However, notwithstanding that these liabilities must be satisfied in the future, the SFCs from 2012-2021 value them at $0. NYSCEF Doc. Nos. 769-779. This is false; they are a liability in the millions of dollars.

[24] In their response to OAG's statement of material facts, defendants concede that "GAAP defines Estimated Current Value as 'the amount at which the item could be exchanged between a buyer and seller, each of whom is well informed and willing, and neither of whom is compelled to buy or sell." NYSCEF Doc No. 1293 at 17.

However, the SFCs all state: "The fact that Mr. Trump will have the use of these funds for that period without cost and that the source of repayment will most likely be a replacement membership has led him to value this liability at zero." See e.g., NYCSCEF Doc. No. 772.

Although it was false to report the membership liabilities as $0, it was not, under the circumstances, *misleading*, as the SFCs state that the reason for so doing. Accordingly, OAG cannot prevail on liability as a result of the failure to report the membership liabilities.

Yet, as discussed *supra*, OAG has demonstrated liability for submitting fraudulent SFCs in 2014-2020 that falsely value the aforementioned US Golf Clubs based on undisclosed brand premiums and failure to report "current" values.

Vornado Partnership Properties

Donald Trump has a 30% limited partnership interest with non-party Vornado Realty Trust in entities that own office buildings in New York City (at 1290 Avenue of the Americas, hereinafter "1290 AOA") and San Francisco at 555 California Street.

Cash/Liquid Classification

Donald Trump's 30% limited partnership stake does not permit him to use or withdraw funds held by the partnerships. NYSCEF Doc. Nos. 916, 917. Notwithstanding, Donald Trump and his trustees classified his 30% interest in the Vornado partnership as a liquid/cash asset on his SFCs for the years 2013-2021. NYSCEF Doc. No. 771-779. This was even though it is "undisputed" by defendants that Donald Trump does not have "the right to use or withdraw [these] funds." NYSCEF Doc. No. 1293 at ¶387-388.

Defendants assert that "[e]ven if the cash held in the partnership was misclassified and should have been reported elsewhere on the SOFCs as an asset (e.g., in the value of the partnership interest), it would not have inflated the total value of cash or President Trump's net worth reported on the SOFCs." NYSCEF Doc No. 1292 at 39.

This argument does not hold any water. Put simply, it was false and misleading for defendants to indicate that it had access to between $14,221,800 and $93,126,589 in liquid assets, sometimes nearly a third of the total cash it claimed, when in fact those assets were completely illiquid. NYSCEF Doc. No. 1293 ¶ 403.

The Appraisals

Cushman & Wakefield appraised the value of 1290 AOA at $2 billion as of November 1, 2012, and $2.3 billion as of November 1, 2016. NYSCEF Doc. No. 919 at 5-6.

However, Donald Trump's 2014 SFC calculated his 30% share based on a purported value of $3,078,338,462; his 2015 SFC was based on a purported value of $2,985,819,936; and his 2016 SFC was based on a purported value of $3,055,000,000. NYSCEF Doc. Nos. 784 at Rows 709-715, 785 at Rows 748-755, 785 at Rows 779-784. This resulted in overvaluations of Donald Trump's 30% interest in 1290 AOA of between $205-$233 million dollars for those years.

CBRE appraised 1290 AOA and determined its value at $2 billion as of October 7, 2021. NYSCEF Doc. No. 947. Nonetheless, the 2021 SFC was calculated based upon a purported value of $2,574,813,800, an overvaluation of Donald Trump's 30% share by $172 million dollars. NYSCEF Doc. No. 791 at Row 918.

The instant motions do not task this Court with determining which appraisals are the most accurate, which would present issues of fact.[25] Rather, time and time again, the Court is not comparing one appraisal to another; it is comparing an independent professional appraisal to a pie-in-the-sky dream of concocted potential.

Accordingly, OAG has demonstrated liability for submitting fraudulent SFCs overvaluing Donald Trump's interest in the Vornado partnership in 2014-2016 and 2021.

Licensing Deals

Each of Donald Trump's SFCs from 2011-2021 has an asset category entitled "Real Estate Licensing Deals," which the SFC represents is value derived from "associations with others for the purpose of developing and managing properties" and the "cash flow that is expected to be derived… from these associations as their potential is realized." NYSCEF Doc. Nos. 769-779. The SFCs further state that "[i]n preparing [these] assessment[s], Mr. Trump and his management considered only situations which have evolved to the point where signed arrangements with the other parties exist and fees and other compensation which he will earn are reasonably quantifiable." Id.

Despite this express language, the SFCs from 2014-2018 and 2020-2021 include valuations of intra-organization deals, all between entities under the Trump Organization umbrella, in this category of assets. NYSCEF Doc. Nos. 1014, 1018, 1019, 1021, 1023, 1024, 1062, 1063, 1064. It was flatly false and misleading to include values of deals between Trump Organization entities while expressly representing in the SFCs that such assets included only valuations derived from "association with others." Improperly including these intra-organization deals resulted in an overvaluation of up to $224 million in 2014, $110 million in 2015, $120 million in 2016, $113 million in 2017, $115 million in 2018, $97 million in 2020, and $106 million in 2021. Id.

OAG has demonstrated liability for the false and misleading valuation of intra-company licensing deals on the SFCs from 2014-2018 and 2020-2021.

The Other Loans

OAG has established that defendants submitted false SFCs after July 13, 2014, pursuant to their other loan commitments. Defendants submitted SFCs to Deutsche Bank as part of their contractual obligations arising out of three different loans: (1) a Chicago Loan, undertaken by 401 North Wabash Venture LLC; (2) a Doral Loan, undertaken by Trump Endeavor LLC; and (3) an Old Post Office Loan, undertaken by Trump Old Post Office LLC. Defendants certified the accuracy of these SFCs to Deutsche Bank for the years 2014-2019 and 2021[26] as part of their

[25] Nor is this Court asked to determine Donald Trump's total wealth.

[26] The gap for 2020 may have been due to the COVID-19 pandemic.

contractual obligations. NYSCEF Doc. Nos. 1097, 1098, 1099, 1100, 1102, 1104, 1106, 1124, 1126, 1155, 1156, 1157.

The Individual Defendants

OAG has demonstrated liability on behalf of all the named individual defendants: (1) **Donald Trump**, as each and every SFC was issued on behalf of "Donald J. Trump"; (2) **Donald Trump, Jr.**, who, along with Allen Weisselberg, certified the accuracy of the SFCs for 2016-2020, and who singlehandedly certified the accuracy of the 2021 SFC (NYSCEF Docs. No. 808-813); (3) **Eric Trump**, who is the listed source for the Seven Springs valuation in 2014,[27] and who signed several guarantor compliance certificates in 2020 and 2021 for Donald J. Trump (NYSCEF Doc. No. 802); (4) **Allen Weisselberg**, who certified the accuracy of the SFCs from 2014-2021 (NYSCEF Doc. Nos. 806-812); (5) and **Jeffrey McConney**, who led the process of preparing all the SFCs since the 1990s[28] (NYSCEF Doc. No. 822 at 52-68).

The Entity Defendants

It is settled law that "[a] parent corporation will not be held liable for the torts or obligations of a subsidiary *unless it can be shown that the parent exercised complete dominion and control over the subsidiary.*" Potash v Port Auth. of New York & New Jersey, 279 AD2d 562, 562 (2d Dept 2001) (emphasis added). Here, it is undisputed that Donald Trump, through one corporate form or another, exercised complete control over the umbrella of entities operating in furtherance of, or on behalf of, "the Trump Organization."

Defendants do not dispute that DJT Holdings LLC and DJT Holdings Managing Member LLC are entities that sit at the top of the Trump Organization's organizational chart and together own many of the Trump-affiliated entities that comprise the Trump Organization. DJT Holdings Managing Member LLC owns 100% of the Trump Organization and DJT Holdings LLC owns 100% of the Trump Organization LLC. NYSCEF Doc. Nos. 4, 819 at ¶1.

Accordingly, OAG has established liability on behalf of all the named entity defendants: (1) **The Trump Organization Inc.**, **the Trump Organization LLC**, **DJT Holdings LLC**, and **DJT Holdings Managing Member LLC**, as each participated in the preparation, submission and certification of the SFCs after July 13, 2014 through the acts of the individual defendants as described *supra*; (2) the **DJT Revocable Trust**, as both Donald Trump Jr. and Allen Weisselberg certified the accuracy of the 2016-2019 SFCs in their capacities as "Trustee, the Donald J. Trump Revocable Trust dated April 7, 2014, as amended" (NYSCEF Doc. No. 808); (3) **Trump Endeavor LLC**, which was the borrower on the Doral Loan, for which SFCs were submitted after July 13, 2014; (4) **401 North Wabash Venture LLC**, which was the borrower on a loan for "Trump Chicago," under which SFCs were required to be (and were) submitted

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[27] Eric Trump also reaffirmed the SFCs accuracy on July 9, 2019. NYSCEF Doc. Nos. 782 at Row 679, 783 at Rows 638-40, 784 at Row 660, 1183.

[28] Jeffrey McConney acknowledged his personal role in preparing supporting data for Donald Trump's SFCs beginning in 2011, testifying that: "I assemble the documentation" and that he would send both supporting data spreadsheets and backup documentation to the accountants. He further conceded that the supporting data spreadsheets were referred to as "Jeff's supporting data" or "Jeff's supporting schedule." NYSCEF Doc. No. 822 at 40, 67-68, 212, 294.

after July 13, 2014; (5) **Trump Old Post Office LLC**, as it was the borrower on the "Old Post Office" loan, under which SFCs were required to be (and were) submitted after July 13, 2014; and **Seven Springs LLC**, the borrowing entity (as described *supra*) under which SFCs were required to be (and were) submitted after July 13, 2014.

Injunctive Relief

OAG has prevailed on liability on its first cause of action pursuant to Executive Law § 63(12) as against all defendants: Donald J. Trump; Donald Trump, Jr.; Eric Trump; Allen Weisselberg; Jeffrey McConney; the DJT Revocable Trust; the Trump Organization Inc; the Trump Organization LLC; DJT Holdings LLC; DJT Holdings Managing Member LLC; Trump Endeavor 12 LLC; 401 North Wabash Venture LLC; Trump Old Post Office LLC; 40 Wall Street LLC; and Seven Springs LLC.

If liability is established under Executive Law § 63(12), the statute itself provides that the attorney general may obtain "an order enjoining the continuance of such business activity or of any fraudulent or illegal acts… and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of … section one hundred thirty of the general business law…."

"[T]he Attorney General may obtain permanent injunctive relief under… Executive Law § 63(12) upon a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d at 496-97 (further stating "[t]his is not a 'run of the mill' action for an injunction, but rather one authorized by remedial legislation, brought by the Attorney-General on behalf of the People of the State and for the purposes of preventing fraud and defeating exploitation") (internal citations omitted).

Having found, at the commencement of the action, that OAG had preliminarily demonstrated defendants' "propensity to engage in persistent fraud," this Court appointed the Hon. Barbara S. Jones (ret.) as an independent monitor "to ensure there is no further fraud or illegality that violates § 63(12) pending the final disposition of this action." NYSCEF Doc. No. 194. On August 3, 2023, Judge Jones reported as follows:

> [S]ince my appointment I have reviewed material financial and accounting information submitted by the Trump Organization. As part of my review, I have made preliminary observations regarding certain current financial disclosures with respect to the Trump Organization's reporting of financial information. Specifically, I have observed that information regarding certain material liabilities provided to lenders – such as intercompany loans between or among Trust entities and Donald J. Trump, certain of the Trust's contingent liabilities, as well as refundable golf club membership deposits—has been incomplete. The Trust also has not consistently provided all required annual and quarterly certifications attesting to the accuracy of certain financial statements.

> In addition, annual audited financial statements for certain entities, prepared by an external accounting firm, list depreciation expenses. However, interim internally prepared financial statements provided to third parties for these same entities inconsistently report depreciation expenses.

NYSCEF Doc. No. 647. Even with a preliminary injunction in place, and with an independent monitor overseeing their compliance, defendants have continued to disseminate false and misleading information while conducting business. This ongoing flouting of this Court's prior order, combined with the persistent nature of the false SFCs year after year, have demonstrated the necessity of canceling the certificates filed under GBL § 130, as the statute provides. People v Northern Leasing, 70 Misc 3d 256, 279-80 (Sup Ct, NY County 2020) (denying a trial on the petition and ordering the LLC respondents to dissolve upon a finding of persistent fraud under Executive Law § 63(12)).

Having prevailed on liability on a standalone Executive Law § 63(12) cause of action, the Attorney General is entitled to the first two prayers for relief sought in her complaint: (1) canceling any certificate filed under and by virtue of the provisions of New York General Business Law § 130 for all the entity defendants found liable, as well as any other entity controlled or beneficially owned by the individual defendants found liable herein, which and who participated in or benefitted from the foregoing fraudulent schemes; and (2) appointing an independent monitor to oversee compliance, financial reporting, valuations, and disclosures to lenders, insurers, and tax authorities at the Trump Organization. NYSCEF Doc. No. 1 at 213.

Remaining Issues to be Determined at Trial

Anything presented in the parties' moving papers that this Court has not ruled upon in this Decision and Order, including determinations on liability for the second through seventh causes of action, the amount of disgorgement of profits to which OAG is entitled, and determinations on the third through ninth prayers for relief sought by OAG in its complaint, presents disputed issues of fact that shall proceed to trial.

Conclusion

For the reasons stated herein, it is hereby

ORDERED that defendants' motion for summary judgment is denied; and it is further

ORDERED that plaintiff's motion for sanctions is granted in part, to the extent of sanctioning Michael Madaio, Esq. (Habba Madaio & Associates, LLP), Clifford S. Robert, Esq. (Robert & Robert PLLC), Michael Farina Esq. (Robert & Robert PLLC), Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC), and Armen Morian (Morian Law PLLC) in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Decision and Order; and it is further

ORDERED that plaintiff's motion for partial summary judgment on its first cause of action is granted in part, to the extent of finding defendants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, the DJT Revocable Trust, the Trump Organization Inc, the Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC to be liable as a matter of law for persistent violations of Executive Law § 63(12); and it is further

ORDERED that any certificates filed under and by virtue of GBL § 130 by any of the entity defendants or by any other entity controlled or beneficially owned by Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney are canceled; and it is further

ORDERED that within 10 days of the date of this order, the parties are directed to recommend the names of no more than three potential independent receivers to manage the dissolution of the canceled LLCs; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

9/26/2023
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED		GRANTED IN PART	X OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE

Exhibit E

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

v.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

Defendants.

Christopher M. Kise, Esq.,

Attorney for Defendants.

Index No: 452564/2022

Engoron, J.S.C.

NOTICE OF APPEAL

Motion Seq. No. 028

PLEASE TAKE NOTICE THAT, pursuant to CPLR §§ 5511 and 5515, Christopher M. Kise, Esq. (hereinafter referred to as "Mr. Kise"), hereby appeals to the Appellate Division, First Department, from the Decision and Order on Motion by Hon. Arthur F. Engoron, J.S.C., dated September 26, 2023 (NYSCEF Doc. No. 1533), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on September 27, 2023, and served by Notice of Entry on September 27, 2023, which granted Plaintiff's motion for sanctions.

This appeal is taken from each and every part of the Order insofar as Mr. Kise is aggrieved.

A copy of the Informational Statement pursuant to 22 NYCRR 1250.3(a) is attached hereto as Exhibit A.

Dated: New York, New York
October 23, 2023

Respectfully submitted,

CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
526 RXR Plaza
Uniondale, New York 11556
Phone: (516) 832-7000
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E-mail: crobert@robertlaw.com
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Attorneys for Non-Party
Christopher M. Kise

-and-

MICHAEL S. ROSS
LAW OFFICES OF MICHAEL S. ROSS
60 East 42nd Street
New York, New York 10165
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E-mail: michaelross@rosslaw.org
Attorneys for Non-Party
Christopher M. Kise

EXHIBIT "A"

Supreme Court of the State of New York
Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

- against -

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC.,THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type

- ☒ Civil Action
- ☐ CPLR article 75 Arbitration
- ☐ Action Commenced under CPLR 214-g
- ☐ CPLR article 78 Proceeding
- ☐ Special Proceeding Other
- ☐ Habeas Corpus Proceeding

Filing Type

- ☒ Appeal
- ☐ Original Proceedings
  - ☐ CPLR Article 78
  - ☐ Eminent Domain
  - ☐ Labor Law 220 or 220-b
  - ☐ Public Officers Law § 36
  - ☐ Real Property Tax Law § 1278
- ☐ Transferred Proceeding
  - ☐ CPLR Article 78
  - ☐ Executive Law § 298
- ☐ CPLR 5704 Review

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

☐ Administrative Review	☒ Business Relationships	☒ Commercial	☐ Contracts
☐ Declaratory Judgment	☐ Domestic Relations	☐ Election Law	☐ Estate Matters
☐ Family Court	☐ Mortgage Foreclosure	☐ Miscellaneous	☐ Prisoner Discipline & Parole
☐ Real Property (other than foreclosure)	☒ Statutory	☐ Taxation	☐ Torts

Appeal

Paper Appealed From (Check one only):

If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

☐ Amended Decree	☐ Determination	■ Order	☐ Resettled Order
☐ Amended Judgement	☐ Finding	☐ Order & Judgment	☐ Ruling
☐ Amended Order	☐ Interlocutory Decree	☐ Partial Decree	☐ Other (specify):
■ Decision	☐ Interlocutory Judgment	☐ Resettled Decree	
☐ Decree	☐ Judgment	☐ Resettled Judgment	

Court: Supreme Court	County: New York
Dated: 09/26/2023	Entered: 09/27/2023
Judge (name in full): Hon. Arthur F. Engoron	Index No.: 452564/2022
Stage: ■ Interlocutory ☐ Final ☐ Post-Final	Trial: ☐ Yes ■ No If Yes: ☐ Jury ☐ Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? ■ Yes ☐ No

If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

2023-04925

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: ☐ Order to Show Cause ☐ Notice of Petition ☐ Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court	County: Choose County
Judge (name in full):	Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Christopher M. Kise, Esq., appeals from the Decision and Order of Supreme Court, New York County (Hon. Arthur F. Engoron, J.S.C.), dated September 26, 2023 and entered by the Clerk of the Court on September 27, 2023, which granted Plaintiff's motions for sanctions.

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Whether Supreme Court committed errors of law and/or fact, abused its discretion, and/or acted in excess of its jurisdiction by, inter alia, granting Plaintiff's motion for sanctions against Christopher M. Kise, Esq. in the amount of $7,500.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	PEOPLE OF THE STATE OF NEW YORK	Plaintiff	Respondent
2	DONALD J. TRUMP	Defendant	None
3	DONALD TRUMP, JR.	Defendant	None
4	ERIC TRUMP	Defendant	None
5	ALLEN WEISSELBERG	Defendant	None
6	JEFFREY MCCONNEY	Defendant	None
7	THE DONALD J. TRUMP REVOCABLE TRUST	Defendant	None
8	THE TRUMP ORGANIZATION, INC.	Defendant	None
9	THE TRUMP ORGANIZATION LLC	Defendant	None
10	DJT HOLDINGS LLC	Defendant	None
11	DJT HOLDINGS MANAGING MEMBER	Defendant	None
12	TRUMP ENDEAVOR 12 LLC	Defendant	None
13	401 NORTH WABASH VENTURE LLC	Defendant	None
14	TRUMP OLD POST OFFICE LLC	Defendant	None
15	40 WALL STREET LLC	Defendant	None
16	SEVEN SPRINGS LLC	Defendant	None
17	Christopher M. Kise, Esq.	Petitioner	Appellant
18			
19			
20			

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Kevin C. Wallace, Esq. and Colleen K. Faherty, Esq., Office of the New York State Attorney General			
Address: 28 Liberty Street			
City: New York	State: New York	Zip: 10005	Telephone No: 212-416-6046
E-mail Address: kevin.wallace@ag.ny.gov; colleen.faherty@ag.ny.gov			
Attorney Type: ☐ Retained ☐ Assigned ■ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 1			
Attorney/Firm Name: Alina Habba, Esq. and Michael Madaio, Esq., Habba Madaio & Associates, LLP			
Address: 112 West 34th Street, 17th &18th Floors			
City: New York	State: New York	Zip: 10020	Telephone No: 908-869-1188
E-mail Address: ahabba@habbalw.com; mmadaio@habbalaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 2, 5-16			
Attorney/Firm Name: Christopher M. Kise, Esq., Continental PLLC			
Address: 101 North Monroe Street, Suite 750			
City: Tallahassee	State: Florida	Zip: 32301	Telephone No: 305-677-2707
E-mail Address: ckise@continentalpllc.com			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ■ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):7, 10-16			
Attorney/Firm Name: Clifford S. Robert, Esq. and Michael Farina, Esq., Robert & Robert PLLC			
Address: 526 RXR Plaza			
City: Uniondale	State: New York	Zip: 11556	Telephone No: 516-832-7000
E-mail Address: crobert@robertlaw.com; mfarina@robertlaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):3-4			
Attorney/Firm Name: Michael S. Ross, Esq., Law Offices of Michael S. Ross			
Address: 640 East 42nd Street, 47th Floor			
City: New York	State: NY	Zip: 10165	Telephone No: 212-505-4060
E-mail Address: michaelross@rosslaw.org			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ■ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 17			
Attorney/Firm Name:			
Address:			
City: New York	State: NY	Zip: 10165	Telephone No:
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

-against-

DONALD J. TRUMP, *et al.*,

Defendants.

Index No. 452564/2022

NOTICE OF ENTRY

PLEASE TAKE NOTICE that annexed hereto is a true and correct copy of the Decision and Order of the Honorable Arthur F. Engoron, J.S.C. dated September 26, 2023, on Motion Sequence Numbers 027, 028, and 029 (NYSCEF Nos. 1531, 1532, 1533), filed and entered in the Office of the Clerk of the Supreme Court, New York County on the 27th day of September, 2023.

Dated: New York, New York
September 27, 2023

LETITIA JAMES
Attorney General of the State of New York

By: */s/ Colleen K Faherty*
Colleen K. Faherty
Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6046
colleen.faherty@ag.ny.gov

Attorney for the People of the State of New York

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON **PART** 37

Justice

----------X

INDEX NO. 452564/2022

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

MOTION DATES 08/30/2023, 08/30/2023, 09/05/2023

Plaintiff,

MOTION SEQ. NO. 026, 027, 028

- v -

DONALD J. TRUMP, DONALD TRUMP JR, ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

DECISION + ORDER ON MOTIONS

Defendants.

----------X

The following e-filed documents, listed by NYSCEF document number (Motion 026) 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1292, 1293, 1294, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415,

1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1442, 1443, 1444, 1445, 1446, 1447

were read on this motion for PARTIAL SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 027) 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1474

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 028) 1263, 1264, 1265, 1276, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473

were read on this motion for SANCTIONS.

Upon the foregoing documents, it is hereby ordered that defendants' motion for summary judgment is denied, plaintiff's motion for partial summary judgment is granted in part, and plaintiff's motion for sanctions is granted in part, all as detailed herein.

This action arises out of a years-long investigation that plaintiff, the Office of the Attorney General of the State of New York ("OAG"), conducted into certain business practices that defendants engaged in from 2011 through 2021. OAG alleges that the individual and entity defendants committed repeated and persistent fraud by preparing, certifying, and submitting to lenders and insurers false and misleading financial statements, thus violating New York Executive Law § 63(12).

Procedural Background

In 2020, OAG commenced a special proceeding seeking to enforce a series of subpoenas against various named defendants and other persons and entities. This Court presided over that proceeding and issued several orders compelling compliance with OAG's subpoenas. See People v The Trump Org., Sup Ct, NY County, Index No. 541685/2020. During that proceeding, OAG and the Trump Organization entered into an agreement, which, broadly speaking, tolled the statute of limitations from November 5, 2020, through May 31, 2022. NYSCEF Doc. No. 1260.

On November 3, 2022, this Court found preliminarily that defendants had a propensity to engage in persistent fraud by submitting false and misleading Statements of Financial Condition ("SFCs") on behalf of defendant Donald J. Trump ("Donald Trump"). NYSCEF Doc. No. 183. Accordingly, the Court granted a preliminary injunction against any further fraud and appointed the Hon. Barbara S. Jones (ret.) as an independent monitor to oversee defendants' financial statements and significant asset transfers. NYSCEF Doc. Nos. 193 and 194.

Defendants moved to dismiss the complaint. In a Decision and Order dated January 6, 2023, this Court denied the motion. NYSCEF Doc. Nos. 453. Defendants appealed, resulting in a January 6, 2023 Order wherein the Appellate Division, First Department modified this Court's order to the extent of: (1) declaring that the "continuing wrong doctrine does not delay or extend [the statute of limitations]"; (2) finding that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and timely against defendants not subject to the tolling agreement if they accrued after February 6, 2016; and (3) dismissing the complaint as against defendant Ivanka Trump on statute of limitations grounds, finding that she was not an employee of the Trump Organization at the time at which the parties entered into the tolling agreement. People v Trump, 217 AD3d 609 (1st Dept 2023).

The Appellate Division declined to dismiss *any* other defendants or *any* causes of action.

Discovery ended on July 28, 2023, and OAG filed a note of issue shortly thereafter. NYSCEF Doc. No. 644. OAG now moves for partial summary judgment on its first cause of action, for fraud under Executive Law § 63(12). NYSCEF Doc. No. 765. Separately, plaintiff now moves, pursuant to 22 NYCRR 130-1.1, to sanction defendants for frivolous motion practice. NYSCEF Doc. No. 1263. Defendants also move for summary judgment, seeking to dismiss the complaint in its entirety. NYSCEF Doc. No. 834.

Executive Law § 63(12)

Executive Law § 63(12) provides, as here pertinent, as follows:

> Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of section four hundred forty of the former penal law or section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper. The word "fraud" or "fraudulent" as used herein shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions. The term "persistent fraud" or "illegality" as used herein shall include continuance or carrying on of any fraudulent or illegal act or conduct. The term "repeated" as used herein shall include repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON ALL CAUSES OF ACTION

Arguments Defendants Raise Again

Standing and Capacity to Sue

Defendants' arguments that OAG has neither capacity nor standing to sue under Executive Law § 63(12), and that the disclaimers of non-party accountants Mazars insulate defendants, invoke the time-loop in the film "Groundhog Day." This Court emphatically rejected these arguments in its preliminary injunction decision and in its dismissal decision, and the First Department affirmed both. Defendants' contention that a different procedural posture mandates a reconsideration, or *a fortiori*, a reversal, is pure sophistry[1].

As this Court and others have made abundantly clear, "[i]t is not disputed that the Attorney General is empowered to sue for violations of [Executive Law § 63(12)]." People v Greenberg, 21 NY3d 439, 446 (2013) (finding Executive Law § 63(12) to be broadly worded anti-fraud device); People v Ford Motor Co., 74 NY2d 495, 502 (1989) ("Executive Law § 63(12) is the procedural route by which the Attorney-General may apply to Supreme Court for an order enjoining repeated illegal or fraudulent acts").

Parens Patriae and Consumer Ambit

Defendants repeat the erroneous argument that the complaint must be dismissed because OAG cannot demonstrate the requirements of a *parens patriae* action, which is one in the public interest. "*Parens patriae* is a common-law standing doctrine that permits the state to commence an action to protect a public interest, like the safety, health or welfare of its citizens." People v Grasso, 11 NY3d 64, 72 at n 4 (2008). Invocation of such doctrine, or its requirements, is not necessary where, as here, the New York legislature has specifically empowered the Attorney General to bring such an action pursuant to Executive Law § 63(12). People v Credit Suisse Sec. (USA) LLC, 31 NY3d 622, 633 (2018) ("it is undisputed that Executive Law § 63(12) gives the Attorney General standing to redress liabilities recognized elsewhere in the law, expanding the scope of available remedies"); People v Trump Entrepreneur Initiative LLC, 137 AD3d 409, 417 (1st Dept 2016) ("[E]ven apart from prevailing authority, the language of the statute itself appears to authorize a cause of action; like similar statutes that authorize causes of action, § 63(12) defines the fraudulent conduct that it prohibits, authorizes the Attorney General to commence an action or proceeding to foreclose that conduct, and specifies the relief, including equitable relief, that the Attorney General may seek").

In any event, even if compliance with the requirements of the *parens patriae* doctrine is necessary, which it is not, OAG has easily satisfied those requirements, as it is well-settled that "[i]n varying contexts, courts have held that a state has a quasi-sovereign interest in protecting the integrity of the marketplace." Grasso at 69 n 4; People v Coventry First LLC, 52 AD3d 345, 346 (1st Dept 2008) ("the claim pursuant to Executive Law § 63(12) constituted proper exercises

[1] Indeed, the Court made this crystal clear in its January 6, 2023 order when it found: "Here, the issues of capacity and standing, are pure issues of law and do not depend on a trial of disputed issues of fact. Simply put, who the instant parties are and what the law says, which determine capacity and standing, are not disputed issues of fact that need to be tried." NYSCEF Doc. No. 453 at 4.

of the State's regulation of businesses within its borders in the interest of securing an honest marketplace"); People v Amazon.com, Inc., 550 F Supp 3d 122, 130-131 (SD NY 2021) ("[T]he State's statutory interest under § 63(12) encompasses the prevention of either 'fraudulent or illegal' business activities. Misconduct that is illegal for reasons other than fraud still implicates the government's interests in guaranteeing a marketplace that adheres to standards of fairness...").

Defendants' rehashed argument that OAG's complaint must be dismissed because it is not designed to protect consumers is unavailing. New York v Feldman, 210 F Supp 2d 294, 299-300 (SD NY 2002) ("[D]efendants' claim that section 63(12) is limited to consumer protection actions is simply incorrect. The New York Attorney General has repeatedly used section 63(12) to secure relief for persons who are not consumers in cases that are not consumer protection actions").

Defendants cite to the trial court decision People v Domino's Pizza, Inc., NY Slip Op 30015(U) (Sup Ct, NY County 2021), which is not binding on this Court, as authority for the proposition that any relief sought here should come in the form of private contract litigation, not "a law enforcement action under a statute designed to address public harm." NYSCEF Doc. No. 835 at 39. However, Domino's is wholly distinguishable from the instant case. There, the Court found that "OAG did not establish that Domino's representations to franchisees... were false, deceptive, or misleading. Accordingly, the Court concludes that OAG has not established that Domino's engaged in conduct that 'tends to deceive or creates an atmosphere conducive to fraud.'" Domino's at 26[2]. Here, as discussed *infra*, OAG demonstrates that defendants repeatedly submitted fraudulent financial documents to obtain financial benefits which otherwise they would not have received.

Defendants glaringly misrepresent the requirements of an Executive Law § 63(12) cause of action. Citing to People v Northern Leasing Sys., Inc., 70 Misc 3d 256, 267 (Sup Ct, NY County 2021), defendants assert that OAG must show "the practice is one likely to mislead a reasonable consumer acting reasonably under the circumstances." NYSCEF Doc. No. 835 at 42. However, the word "consumer" does not appear anywhere in the referenced decision, and defendants' characterization of its holding is inaccurate[3]. Northern Leasing confirms that the "test for fraud under Executive Law § 63(12) is whether an act tends to deceive or creates an environment conducive to fraud." Northern Leasing at 267 (further holding "Executive Law § 63(12) expands fraud to encompass new liability, while including non-statutory fraud claims" and finding that "[a] claim under Executive Law § 63(12) is the exercise of 'the State's regulation of businesses within its borders in the interest of securing an honest marketplace'").

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[2] As the failure to demonstrate false misrepresentations foreclosed the possibility of liability on that issue in Domino's, any commentary about the statute's requirements was pure *dicta*.

[3] Although "consumer" does appear in the First Department's affirmance of Northern Leasing, it does not advance defendants' proposition that Executive Law § 63(12) actions be consumer oriented; it simply reaffirms that "the test for fraud is whether the targeted act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." 193 AD3d 67 (1st Dept 2021). The fact that Northern Leasing challenged actions targeted at consumers does not mean that Executive Law § 63(12) is restricted to such actions.

Non-Party Disclaimers

Defendants, yet again, argue that OAG's complaint must be dismissed because the SFCs contain language, provided by non-party accountants Mazars, that indicate that they have not audited or reviewed the accompanying financial statements and therefore cannot express an opinion as to whether the financial statements comply with Generally Accepted Accounting Principles ("GAAP"). However, as this Court already ruled, these non-party disclaimers do not insulate defendants from liability, as they plainly state that "Donald J. Trump is responsible for the preparation and fair presentation of the financial statement in accordance with accounting principles generally accepted in the United States of America and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the financial statement." NYSCEF Doc. No. 183.

As this Court explained in its November 3, 2022 Decision and Order: "[t]he law is abundantly clear that" using a disclaimer as a defense to a justifiable reliance claim requires proof that: "(1) the disclaimer is made sufficiently specific to the particular type of fact misrepresented or undisclosed; and (2) the alleged misrepresentations or omissions did not concern facts peculiarly within the [defendant's] knowledge." Basis Yield Alpha Fund (Master) v Goldman Sachs Grp., Inc., 115 AD3d 128, 137 (1st Dept 2014) ("a [plaintiff] may not be precluded from claiming reliance on misrepresentation of facts peculiarly within the [defendant's] knowledge"); People v Bull Inv. Grp., Inc., 46 AD2d 25, 29 (3d Dept 1974) ("It has been stated that '[t]he rule is clear that where one party to a transaction has superior knowledge, or means of knowledge not open to both parties alike, he is under a legal obligation to speak and his silence constitutes fraud"). As the SFCs did not particularize the type of fact misrepresented or undisclosed and were unquestionably based on information peculiarly within defendants' knowledge, defendants may not rely on such purported disclaimers as a defense.

In sum, the Mazars disclaimers put the onus for accuracy squarely on defendants' shoulders.

Scienter and "Participation" Requirements

Defendants erroneously claim that Fletcher v Dakota, Inc, 99 AD3d 43, 49 (1st Dept 2012), stands for the proposition that the purported "participation element [of a cause of action under Executive Law § 63(12)] is satisfied where the defendant 'directed, controlled, or ratified the decision that led to plaintiff's injury.'" However, Fletcher is not an Executive Law § 63(12) action, it was brought as a corporate tort; accordingly, is not relevant here.[4] Executive Law § 63(12) is much more than a mere codification of common law fraud.

Defendants also incorrectly rely on Abrahami v UPC Const. Co., 224 AD2d 231, 233 (1st Dept 1996), for the proposition that "[m]erely providing copies of purportedly false financial statements is insufficient." NYSCEF Doc. No. 835 at 55. However, as Abrahami was not brought pursuant to Executive Law § 63(12), its analysis regarding "intent to deceive" is irrelevant. Unlike the situation in Abrahami, where an action is brought pursuant to Executive

[4] In fact, had defendants not cut off the beginning of the sentence they cited, it would be evident on its face that such case is legally irrelevant, as the full sentence reads: "A leading treatise on corporations states that a director may be held individually liable to third parties for a corporate tort if he either participated in the tort or else 'directed, controlled, approved or ratified the decision that led to the plaintiff's injury.'" Fletcher at 49.

Law § 63(12), "good faith or lack of fraudulent intent is not in issue." People v Interstate Tractor Trailer Training, Inc., 66 Misc 2d 678, 682 (Sup Ct, NY County 1971) (holding liability under Executive Law § 63(12) does not require demonstrating an "intent to defraud"); Trump Entrepreneur Initiative at 417 ("fraud under section 63(12) may be established without proof of scienter or reliance"); Bull Inv. Grp. at 27 ("[i]t is well-settled that the definition of fraud under subdivision 12 of section 63 of the Executive Law is extremely broad and proof of scienter is not necessary").

Disgorgement of Profits

In flagrant disregard of prior orders of this Court *and* the First Department, defendants repeat the untenable notion that "disgorgement is unavailable as a matter of law" in Executive Law § 63(12) actions. NYSCEF Doc. No. 835 at 70. This is patently false, as defendants are, or certainly should be, aware that the Appellate Division, First Department made it clear *in this very case* that "[w]e have already held that the failure to allege losses does not require dismissal of a claim for disgorgement under Executive Law § 63(12)." Trump, 217 AD3d at 610.

Defendants nonetheless rely on the trial court decision in People v Direct Revenue, LLC, 19 Misc 3d 1124(A) (Sup Ct, NY County 2008), for the proposition that Executive Law § 63(12) "do[es] no[t] authorize the general disgorgement of profits received from sources other than the public." NYSCEF Doc. No. 835 at 71-72. However, defendants' neglect to mention that Direct Revenue was superseded, and essentially overruled, in 2016 by the New York Court of Appeals in People v Greenberg, which unequivocally held that "disgorgement is an available remedy under the Martin Act and the Executive Law." People v Greenberg, 27 NY3d 490, 497 (2016).

Also fatally flawed is defendants' reliance on People v Frink Am., Inc., 2 AD3d 1379, 1380 (4th Dept 2003), as it relies on the outdated proposition that Executive Law § 63(12) "does not create any new causes of action" and thus, the remedy of disgorgement is unavailable. NYSCEF Doc. No. 835 at 73-74. However, in Trump Entrepreneur Initiative, in which at least three of the instant defendants were parties, the First Department unambiguously declared that "the Attorney General is, in fact, authorized to bring a cause of action for fraud under Executive Law § 63(12)." Trump Entrepreneur Initiative at 418; see also People v Pharmacia Corp., 27 Misc 3d 368, 373 (Sup Ct, NY County 2010) (holding "Executive Law § 63(12) applies to fraudulent conduct actionable at common law, as well as to conduct for which liability arises solely from the statute").

Defendants incorrectly posit that, under People v Ernst & Young, LLP, 114 AD3d 569 (1st Dept 2014), disgorgement is available under the Martin Act but not under Executive Law § 63(12). NYSCEF Doc. No. 836 at 73. This is simply untrue. In Ernst & Young, the First Department specifically held that disgorgement was an available and potentially "crucial" remedy in an Executive Law § 63(12) action. Ernst & Young at 570.

Defendants correctly assert that "the record is devoid of any evidence of default, breach, late payment, or any complaint of harm" and argue that as none of the recipients of the subject SFCs ever lodged a complaint with OAG or otherwise claimed damages, disgorgement of profits would be inappropriate. NYSCEF Doc. No. 835 at 40.

However, that is completely irrelevant. As the Ernst & Young Court noted:

> [W]here, as here, there is a claim based on fraudulent activity, disgorgement may be available as an equitable remedy, notwithstanding the absence of loss to individuals or independent claims for restitution. Disgorgement is distinct from the remedy of restitution because it focuses on the gain to the wrongdoer as opposed to the loss to the victim. Thus, disgorgement aims to deter wrongdoing by preventing the wrongdoer from retaining ill-gotten gains from fraudulent conduct. Accordingly, the remedy of disgorgement does not require a showing or allegation of direct losses to consumers or the public; the source of the ill-gotten gains is "immaterial."

Id. (disgorgement is not impermissible penalty "since the wrongdoer who is deprived of an illicit gain is ideally left in the position he would have been had there been no misconduct") (internal citations omitted); see also Amazon.com at 130 ("Executive Law § 63(12) authorizes the Attorney General to seek injunctive and other relief", and finding "the Attorney General can seek disgorgement of profits on the State's behalf").

Sanctionable Conduct for Frivolous Motion Practice

In response to both OAG's request for a preliminary injunction and to defendants' motions to dismiss, this Court rejected every one of the aforementioned arguments. In rejecting such arguments for the second time, this Court cautioned that "sophisticated counsel should have known better." [5] NYSCEF Doc. No. 453 at 5. However, the Court declined to impose sanctions, believing it had "made its point." Id.

Apparently, the point was not received.

One would not know from reading defendants' papers that this Court has already *twice* ruled against these arguments, called them frivolous, and *twice* been affirmed by the First Department.

"In its discretion, a court may award costs and financial sanctions against an attorney or party resulting from frivolous conduct." Kamen v Diaz-Kamen, 40 AD3d 937, 937 (2d Dept 2007). See Yan v Klein, 35 AD3d 729, 729–30 (2d Dept 2006) ("The plaintiff, following two prior actions, has 'continued to press the same patently meritless claims,' most of which are now barred by the doctrines of res judicata and collateral estoppel").

Defendants' conduct in reiterating these frivolous arguments is egregious. We are way beyond the point of "sophisticated counsel should have known better"; we are at the point of intentional and blatant disregard of controlling authority and law of the case. This Court emphatically rejected these arguments, as did the First Department. Defendants' repetition of them here is indefensible.

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5 The Court even went so far as to caution that the "arguments were borderline frivolous even the first time defendants made them." NYSCEF Doc. No. 453 at 3.

Pursuant to New York Administrative Code § 130-1.1, "[t]he Court, as appropriate, may make such an award of costs or impose such financial sanctions against either an attorney or a party to the litigation or against both." The provision further states that:

> For purposes of this Part, conduct is frivolous if:
>
> (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
>
> (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
>
> (3) it asserts material factual statements that are false.

22 NYCRR 130-1.1(c). Defendants' inscrutable persistence in re-presenting these arguments clearly satisfies the first of these three possible criteria.

When considering imposing sanctions "[a]mong the factors [the court] is directed to consider is whether the conduct was continued when it became apparent, or should have become apparent, that the conduct was frivolous, or when such was brought to the attention of the parties or to counsel." Levy v Carol Mgmt. Corp., 260 AD2d 27, 34 (1st Dept 1999) (further finding that sanctions both "punish past conduct" and "they are goal oriented, in that they are useful in deterring future frivolous conduct").

In its January 6, 2023 Decision and Order, this Court warned defendants that their "reiteration of [these previously rejected arguments] scattered across five different motions to dismis[s] was frivolous." NYSCEF Doc. No. 453 at 3.

In a last-ditch attempt to stave off sanctions, defendants have submitted an affirmation by the Hon. Leonard B. Austin (ret.), who had a supremely distinguished judicial career, culminating in 12 years on the Appellate Division, Second Department. NYSCEF Doc. No. 1449. Justice Austin presents what is essentially a primer on the interplay between motions to dismiss and motions for summary judgment, and every point of law is valid.

However, it is wholly invalid as a reason for this Court to deny sanctions. First, legal arguments are for counsel to make, not for experts to submit. "The rule prohibiting experts from providing their legal opinions or conclusions is 'so well-established that it is often deemed a basic premise or assumption of evidence law—a kind of axiomatic principle.'" In re Initial Pub. Offering Sec. Litig., 174 F Supp 2d 61, 64 (SD NY 2001) (citing Thomas Baker, The Impropriety of Expert Witness Testimony on the Law, 40 U Kan LRev 325, 352 (1992) (precluding "expert affidavits" on the law); accord, Note, Expert Legal Testimony, 97 Harv LRev 797, 797 (1984) ("it remains black-letter law that expert legal testimony is not permissible"). Neither defendants nor Justice Austin has sought permission to file an amicus brief. In their own submissions, defendants have expounded on the law of capacity, standing, disclaimers, motions to dismiss, motions for summary judgment, and sanctions. The heft and prestige of a legal lion adds nothing.

More importantly, the subject affirmation utterly fails to fit the specific facts of this case into the general principles it enunciates. In many situations, discovery, and a complete record, and the reversal of the burden of proof, will turn the tide, requiring that a valid complaint be dismissed because there is no evidence to support it. But standing and capacity are legal questions, not factual issues. Crucially, while defendants have, by their own account, conducted extensive discovery and have created a complete record, they fail to point to a single fact that discovery has uncovered, let alone a single fact in the record, that changes the calculus of their denied and doomed capacity and standing arguments.

Capacity and standing are not esoteric concepts. Infants, legally declared incompetents, and persons under certain legal disabilities are not allowed to sue. The New York Attorney General is none of the above. If my sibling or neighbor is harmed, I do not have standing to sue for his or her injury. Citizens may not sue to prevent governmental actions unless they may suffer some personal harm. Executive Law § 63(12) was promulgated to give the Attorney General standing to sue on behalf of the people of New York to prevent or deter the precise type of fraud here at issue. Arguments to the contrary are risible.

Defendants' arguments that the factual record developed in discovery changed the landscape under which standing should be viewed is legally preposterous. The best that defendants could muster at oral argument was to contend (incorrectly) that plaintiff cannot sue because the subject transactions were between private entities, and nobody lost money. However, that is purely an argument on the merits, not an argument on standing. Taken to its logical extreme, absolutely any time a defendant denies liability, it could move to dismiss on the ground of lack of standing.

Exacerbating defendants' obstreperous conduct is their continued reliance on bogus arguments, in papers and oral argument. In defendants' world: rent regulated apartments are worth the same as unregulated apartments; restricted land is worth the same as unrestricted land; restrictions can evaporate into thin air; a disclaimer by one party casting responsibility on another party exonerates the other party's lies; the Attorney General of the State of New York does not have capacity to sue or standing to sue (never mind all those cases where the Attorney General has sued successfully) under a statute expressly designed to provide that right; all illegal acts are untimely if they stem from one untimely act; and square footage subjective.

That is a fantasy world, not the real world.

There is also a larger context to the sanctions issue. Several defendants are no strangers to sanctions and why courts are sometimes constrained to issue them. In the investigatory special proceeding this Court found Donald Trump in contempt of Court and sanctioned him $10,000 per day for failing to comply with his discovery obligations. This Court lifted the contempt after 11 days. The First Department affirmed the contempt and the fines. People v Trump, 213 AD3d 503, 504 (1st Dept 2023) ("[T]he financial sanction to compel compliance was a proper exercise of the court's discretionary power and was not excessive or otherwise improper, under the particular circumstances").

In Donald J. Trump v Hillary R. Clinton, 22-14102-CV-DMM, ("Order on Motion for Indicative Ruling") (filed September 15, 2023) (SD FL), Judge Donald M. Middlebrooks denied what in

New York legal parlance would be called "a motion to reargue," pursuant to which Donald Trump asked Judge Middlebrooks to vacate sanctions imposed on him and his legal team totaling close to one million dollars. Judge Middlebrooks wrote, on the first page thereof, that "Movants acted in bad faith in bringing this lawsuit and that this case exemplifies Mr. Trump's history of abusing the judicial process.[6]" Id.

Unfortunately, sanctions are the only way to impress upon defendants' attorneys the consequences of engaging in repetitive, frivolous motion practice after this Court, affirmed by the Appellate Division, expressly warned them against doing so. Boye v Rubin & Bailin, LLP, 152 AD3d 1, 11 (1st Dept 2017) ("sanctions serve to deter future frivolous conduct" and their "goals include preventing the waste of judicial resources, and deterring vexatious litigation and dilatory or malicious litigation tactics").

It is of no consequence whether the arguments were made at the direction of the clients or *sua sponte* by the attorneys; counsel are "ethically obligated to withdraw any baseless and false claims, if not upon [their] own review of the record, certainly by the time [the] Supreme Court advised [them] of this fact." Boye at 11 (upholding sanctions against attorneys because "counsel continued to... pursue claims which were completely without merit in law or fact."); see also Nachbaur v Am. Transit Ins. Co., 300 AD2d 74, 75 (1st Dept 2002) (motion court properly sanctioned attorneys for "repetitive and meritless motions"); Leventritt v Eckstein, 206 AD2d 313, 314 (1st Dept 1994) (affirming sanctions imposed on attorney for "repeated pattern of frivolous conduct"); William Stockler & Co. v Heller, 189 AD2d 601, 603 (1st Dept 1993) (affirming sanctions against attorney upon finding "there was no factual or legal basis for defendant's original cross motion, or for the reargument motion, that both motions were 'totally frivolous' and were submitted 'just really to delay'"). Counsel should be the first line of defense against frivolous litigation.

Accordingly, this Court grants OAG's motion for sanctions, in part, to the extent of sanctioning each of defendants' attorneys who signed their names to the instant legal briefs[7], in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Order.

Arguments Defendants Raise for the First Time

Summary Judgment Standard

To prevail on its motion for summary judgment on all causes of action, defendants must first "make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient

[6] One factor Judge Middlebrooks considered was Donald Trump's "disregard for legal principles and precedent." Id. at 14. In short, Donald Trump, and his lawyers, are not sanctions neophytes. This is not their first rodeo.

[7] The following attorneys signed their names to defendants' instant briefs and are, accordingly, sanctioned $7,500 each: Michael Madaio, Esq. (Habba Madaio & Associates, LLP); Clifford S. Robert, Esq. (Robert & Robert PLLC); Michael Farina Esq. (Robert & Robert PLLC); Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC); and Armen Morian (Morian Law PLLC).

evidence to eliminate any material issues of fact from the case." Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 (1985). "Failure [of the movant] to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers." Id. If the defendants make out their prima facie showing, the burden then shifts to plaintiff to offer evidence sufficient to rebut that showing by identifying disputed issues of fact that should go before a trier of fact.

Defendants strenuously argue throughout their briefs that OAG has not met her burden sufficient to defeat defendants' motion for summary judgment. However, defendants misstate the black letter law applicable to summary judgment, citing to City Dental Servs., P.C. v New York Cent. Mut., 34 Misc 3d 127(A) (App Term 2d, 11th, 13th Jud Dists 2011) for the flatly wrong proposition that "in order to defeat summary judgment on these claims of predicate illegality, the NYAG must, with respect to each predicate illegality attached, 'establish[] each element of its cause with respect to those causes of action.'" NYSCEF Doc. No. 835 at 62.

Not only does City Dental not stand for that proposition (it merely found that under the circumstances of that case, plaintiff's evidence failed to meet her burden on summary judgment), but the law is well-settled that "to defeat a motion for summary judgment the opposing party must 'show facts sufficient to require a trial of any issue of fact," not make out its own case. Zuckerman v City of New York, 49 NY2d 557, 562 (1980). While OAG must establish each and every element of its cause(s) of action in order to *prevail* on its own motion for summary judgment, in order to defeat defendants' motion for summary judgment (provided defendants are able to demonstrate a prima facie case) "an opposing party must 'show facts sufficient to require a trial of any issue of fact.'" Guzman v Strab Const. Corp., 228 AD2d 645, 646 (2d Dept 1996) ("evidentiary facts derived from the documents submitted [in opposition to summary judgment motion] are sufficient to present a triable issue of fact").

The "Worthless Clause"

Defendants rely on what they call a "worthless clause" set forth in the SFCs under the section entitled "Basis of Presentation" that reads, as here pertinent, as follows:

> Assets are stated at their estimated current values and liabilities at their estimated current amounts using various valuation methods. Such valuation methods include, but are not limited to, the use of appraisals, capitalization of anticipated earnings, recent sales and offers, and estimates of current values as determined by Mr. Trump in conjunction with his associates and, in some instances, outside professionals. Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates presented herein are not necessarily indicative of the amount that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts.

NYSCEF Doc. Nos. 769 at 7; 770 at 7; 771 at 7; 772 at 7; 773 at 7.

In his sworn deposition, Donald Trump spent a lot of time invoking this clause: "Well, they call it a 'disclaimer.' They call it 'worthless clause' too, because it makes the statement 'worthless.'" NYSCEF Doc. No. 859 at 67. Donald Trump goes on to say that "I have a clause in there that says, don't believe the statement, go out and do your own work. This statement is 'worthless.' It means nothing." Id. at 68. Furthermore, Donald Trump implies that he did not consider it important to review the SFCs for accuracy because of the existence of this purported "worthless clause":

> OAG: Does this refresh your recollection of the process whereby you would get final review of the Statement of Financial Condition?
>
> DJT: Yeah, I think generally. It's interesting. I would say as years went by, I got less and less and then once I became President, I would – if I saw it at all, I'd see it, you know, after it was already done.
>
> OAG: So in the period –
>
> DJT: Again, you know, I hate to be boring and tell you this. When you have the worthless clause on a piece of paper and the first – literally the first page you're reading about how this is a worthless statement from the standpoint of your using it as a bank or whatever –whoever may be using it, you tend not to get overly excited about it. I think it had very little impact, if any impact on the banks.
>
> ....
>
> OAG: So am I understanding that you didn't particularly care about what was in the Statement of Financial Condition?
>
> DJT: I didn't get involved in it very much. I felt it was a meaningless document, other than it was almost a list of my properties, with good faith effort of people trying to put some value down. It was a good faith effort.

Id. at 107-108. Defendants further submit the affidavit and deposition transcript of Robert Unell, who purports to be an expert in commercial real estate, for the proposition that because of "the worthless clause" in the SFC, "no lender relies on these for what it is." NYSCEF Doc. Nos. 1030 at 183-184; 1031.

However, defendants' reliance on these "worthless" disclaimers is worthless. The clause does not use the words "worthless" or "useless" or "ignore" or "disregard" or any similar words. It does not say, "the values herein are what I think the properties will be worth in ten or more years." Indeed, the quoted language uses the word "current" no less than five times, and the word "future" zero times.

Additionally, as discussed *supra*, a defendant may not rely on a disclaimer for misrepresentation of facts peculiarly within the defendant's knowledge. Basis Yield Alpha Fund at 136. Here, as the valuations of the subject properties are, obviously, peculiarly within defendants' knowledge, their reliance on them is to no avail.

Furthermore, "[t]his 'special facts doctrine' applies *regardless of the level of sophistication of the parties*." TIAA Glob. Invs. LLC v One Astoria Square LLC, 127 AD3d 75, 87 (1st Dept 2015) (emphasis added) (holding disclaimer does not bar liability for fraud where facts were peculiarly within disclaiming party's knowledge).

Thus, the "worthless clause" does not say what defendants say it says, does not rise to the level of an enforceable disclaimer, and cannot be used to insulate fraud as to facts peculiarly within defendants' knowledge, even vis-à-vis sophisticated recipients.

The Tolling Agreement

The First Department has declared that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and claims against defendants not subject to the tolling agreement are timely if they accrued after February 6, 2016. Trump, 217 AD3d at 611. Defendants concede that the tolling agreement binds each of the LLC-defendants and the Trump Organization. However, they argue that each of the individual defendants and the Donald J. Trump Revocable Trust (the "DJT Revocable Trust") are not bound by the agreement.

Alan Garten, the Trump Organization's Chief Legal Officer, originally entered into the tolling agreement on behalf of "the Trump Organization" on August 27, 2021; the agreement was extended one time by an amendment dated May 3, 2022. NYSCEF Doc. No. 1260. It tolls the statute of limitations for the period from November 5, 2020, through May 31, 2022. Id. at 2. The agreement contains a footnote to the entity "the Trump Organization" that reads as follows:

> As noted in the December 7, 2019 subpoena issued in this investigation to the Trump Organization, the "Trump Organization" as used herein includes The Trump Organization, Inc; DJT Holdings LLC; DJT Holdings Managing Member LLC; and any predecessors, successors, present or former parents, subsidiaries, and affiliates, whether direct or indirect; and all directors, officers, partners, employees, agents, contractors, consultants, representatives, and attorneys of the foregoing, and any other Persons associated with or acting on behalf of the foregoing, or acting on behalf of any predecessors, successors, or affiliates of the foregoing.

Id. at 4 n 1.

Thus, the tolling agreement at issue here binds "all directors [and] officers" and "present or former parents" of the Trump Organization and its affiliates and subsidiaries. Id. It is undisputed that at the time the tolling agreement was executed, each individual defendant, Donald J. Trump, Donald Trump Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney,

were all directors and/or officers of the Trump Organization. NYSCEF Doc. No. 1293 at ¶¶ 673, 680, 696, 710, 736.

Defendants argue that the non-signatory defendants are not bound by the agreement, citing Highland Crusader Offshore Partners, L.P. v Targeted Delivery Techs. Holdings, Ltd., 184 AD3d 116, 121 (1st Dept 2020), for the "general principal that only the parties to a contract are bound by its terms." NYSCEF Doc. No. 835 at 27. However, defendants fail to quote the following sentence, which provides that "[a] non-signatory may be bound by a contract under certain limited circumstances." Highland at 122. See also Oberon Sec., LLC v Titanic Ent. Holdings LLC, 198 AD3d 602, 603 (1st Dept 2021) (non-signatory companies bound by agreement with language defining signatory to include "all subsidiaries, affiliates, [and] successors").

In People v JUUL Labs, Inc., 212 AD3d 414, 417 (1st Dept 2023), in a case involving nearly identical language in a corporate tolling agreement[8], the First Department recently held that non-signatory corporate affiliates, officers, and directors were bound by the agreement. Similarly, here all the individual defendants are bound by the instant tolling agreement's terms and may be held liable for any claims that accrued after July 13, 2014.

Defendants argue that OAG is judicially estopped from asserting that the agreement binds the individual defendants based on statements OAG's counsel made during oral argument in the investigatory special proceeding. NYSCEF Doc. No. 1292 at 26. Specifically, on April 25, 2022, while seeking to hold Donald Trump in contempt for failing to comply with court orders, OAG's counsel stated: "[t]here is hard prejudice because Donald Trump is not a party to the tolling agreement, that tolling agreement only applies to the Trump Organization." NYSCEF Doc. No. 1041 at 59.

For judicial estoppel to be applicable: "First, the party against whom the estoppel is asserted must have argued an inconsistent position in a prior proceeding; and second, the prior inconsistent position must have been adopted by the court in some manner." Bates v Long Island R. Co., 997 F2d 1028, 1038 (2d Cir 1993).

Defendants are correct that the first prong is satisfied, in that the statements OAG's counsel made during oral argument are inconsistent with the position OAG is now taking. However, defendants cannot demonstrate that this Court adopted the prior position. Indeed, this Court did not need to, and did not, consider the tolling agreement when it issued its April 26, 2022 Decision and Order finding Donald Trump in contempt. See Ghatani v AGH Realty, LLC, 181 AD3d 909, 911 (2d Dept 2020) ("For the doctrine [of judicial estoppel] to apply, there must be a final determination endorsing the party's inconsistent position in the prior proceeding").

This Court has not addressed the tolling agreement until now. Accordingly, defendants cannot demonstrate that this Court adopted OAG's prior inconsistent position.

[8] The substantially similar tolling agreement at issue in Juul can be found under Index No. 452168/2019, NYSCEF Doc. No. 176.

Moreover, "[t]he party asserting estoppel must show with respect to himself: '(1) lack of knowledge of the true facts; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change in his position.'" BWA Corp. v Alltrans Exp. U.S.A., Inc., 112 AD2d 850, 853 (1st Dept 1985). Here, none of the defendants claim that they changed their positions or courses of conduct in reliance upon the statement of OAG's counsel during oral argument.

Finally, while judicial estoppel may be applied to prohibit inconsistent changes in factual positions, courts have declined to extend the doctrine to changes in legal positions. Seneca Nation of Indians v New York, 26 F Supp 2d 555, 565 (WD NY 1998), affd, 178 F3d 95 (2d Cir 1999) (finding "[t]here is no legal authority" for "broadening of the doctrine" to "include seemingly inconsistent legal positions"). Who physically signed the agreement is a question of fact; whom it binds is a question of law.

Defendants' argument that the DJT Revocable Trust is not bound by the tolling agreement falls flat. In his deposition, Donald Trump affirmed under oath that the assets of the Trump Organization are held in the DJT Revocable Trust, for which he is the sole donor and beneficiary. NYSCEF Doc. No. 859 at 21. Donald Trump also affirmed that at the time the trust was formed, he was the sole trustee and remained the sole trustee until 2017, when defendants Allen Weisselberg and Donald Trump, Jr. became the sole trustees. Id. at 20-24.

As every beneficiary, donor, and trustee of the DJT Revocable Trust is a defendant bound by the tolling agreement, and as the trust is unquestionably a "parent" of the Trump Organization, so too does the tolling agreement bind the DJT Revocable Trust. See People v Leasing Expenses Co. LLC, 199 AD3d 521, 522 (1st Dept 2021) ("It may likewise be inferred that the trustees had knowledge of the activities of the businesses they controlled through the trust mechanism. Hence, under Executive Law § 63(12), the family trusts and trustees may likewise be held liable for the fraud"); see e.g., Kurzman v Graham, 12 Misc 3d 586, 590 (Sup Ct, NY County 2006) ("courts will not allow the owner of assets to evade creditors by placing the property in a trust while retaining a right to revoke the trust").

Defendants cite to New York Estates, Powers and Trust Law § 11-1.1(b)(17) for the proposition that only a trustee may bind a trust to an agreement. However, § 11-1.1(b)(17) does not state this; rather, it states:

> (b) In the absence of contrary or limiting provisions in the court order or decree appointing a fiduciary, or in a subsequent order or decree, or in the will, deed or other instrument, every fiduciary is authorized:
>
> ...
>
> (17) To execute and deliver agreements, assignments, bills of sale, contracts, deeds, notes, receipts and any other instrument necessary or appropriate for the administration of the estate or trust.

This provision simply says what a fiduciary is permitted to do in the absence of a contrary provision. It does nothing to advance defendants' argument that *only* a trustee may bind a trust,

particularly since defendants fail to cite to any provision of the DJT Revocable Trust restricting who can bind it, as § 11-1.1(b)(17) anticipates.

Moreover, Korn v Korn, 206 AD3d 529, 530 (1st Dept 2022), upon which defendants inexplicably rely, is irrelevant to the instant analysis, as that case involved an examination by the court as to whether a fiduciary had a right or duty to negotiate on behalf of an estate pursuant to § 11-1.1(b)(13), not pursuant to § 11-1.1(b)(17), to which defendants cite.

Finally, "the Attorney General should not be limited, in [her] duty to protect the public interest, by an... agreement [s]he did not join." People v Coventry First LLC, 13 NY3d 108, 114 (2009) (holding Attorney General not bound by arbitration agreement when pursuing Executive Law § 63(12) claim and finding "[s]uch an arrangement between private parties cannot alter the Attorney General's statutory role or the remedies that [s]he is empowered to seek").

The tolling agreement was a mutually beneficial and common arrangement pursuant to which OAG agreed to hold off suing, and Alan Garten, on behalf of the Trump Organization, agreed to toll the statute of limitations. All defendants received the benefit of the bargain; OAG held off suing. OAG is entitled to its benefit of the bargain, the tolling of the statute of limitations, for the limited agreed-upon time, as against anyone it could have sued for the matters at issue at the time at which the agreement was executed. OAG clearly did not intend to permit defendants' principals to evade the tolling agreement based on a technicality contrary to the spirit of the agreement and controlling caselaw.

Statute of Limitations

As a general rule, statutes of limitation start running when a claim accrues, that is, when it can be sued upon. In arguing that OAG's causes of action are untimely, defendants incorrectly assert that the statute of limitations starts running on the date the parties entered into the subject agreements, or when the loans closed. However, the First Department did not use the word "closed," it used the word "completed." Trump, 217 AD3d at 611. Obviously, the transactions were not "completed" while the defendants were still obligated to, and did, annually submit current SFCs to comply with the terms of the loan agreements.

Defendants further assert that any continuing documentation provided after the agreements were entered into, or when the loans closed, is of no consequence if the proceeds were distributed prior to July 2014. NYSCEF Doc. No. 835 at 18. This argument is unavailing. As OAG asserts, each submission of an SFC after July 13, 2014, constituted a separate fraudulent act. Indeed, each submission of a financial document to a third-party lender or insurer would "requir[e] a separate exercise of judgment and authority," triggering a new claim. Yin Shin Leung Charitable Found. v Seng, 177 AD3d 463, 464 (1st Dept 2019) (finding continuous series of wrongs each of which gave rise to its own claim).

Defendants mistakenly assert that if a loan agreement was entered into and its proceeds were dispersed prior to the applicable statute of limitations, then a claim arising out of submitting any subsequent contractually required financial documentation is also untimely, irrespective of when that documentation is submitted. Defendants would have this Court apply a bizarre, invented, inverted form of the "relation back" doctrine, pursuant to which if one aspect of fraudulent

business conduct falls outside the statute of limitations, then all subsequent aspects of fraudulent conduct also fall outside the statute, no matter how inextricably intertwined.

Of course, this is contrary to controlling case law, which holds that a cause of action accrues at the time "when one misrepresents a material fact." Graubard Mollen Dannett & Horowitz v Moskovitz, 86 NY2d 112, 12 (1995). Moreover, even the plain language of Executive Law § 63(12) states: "[t]he term 'repeated' as used herein shall include repetition of any *separate and distinct fraudulent or illegal act*" (emphasis added). Clearly, the submission of each separate fraudulent SFC is a distinct fraudulent act.

OAG is not challenging the loans, the closings, or the disbursements; it is challenging defendants' submissions of financial documents containing false and misleading information. Thus, any SFC that was submitted after July 13, 2014, falls within the applicable statute of limitations. CW Capital Cobalt VR Ltd. v CW Capital Invs., LLC, 195 AD3d 12, 19-20 (1st Dept 2021) (each instance of wrongful conduct a "separate, actionable wrong" giving "rise to a new claim").

Materiality

It is settled that a standalone cause of action under Executive Law § 63(12) does not require a demonstration of materiality but merely that an "act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." People v Gen. Elec. Co., 302 AD2d 314, 314-315 (1st Dept 2003) (holding that, unlike GBL § 349, plaintiff need not prove "the challenged act or practice 'was misleading in a material way'").

Although the Domino's court found that "evidence regarding falsity, materiality, reliance and causation plainly is *relevant* to determining whether the Attorney General has established that the challenged conduct has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud" (Domino's at 11), every Appellate Division and the New York Court of Appeals now hold that materiality and scienter are not requirements for liability under § 63(12).

However, as discussed *infra*, although materiality is required under the second through seventh causes of action, it is not required under a standalone cause of action under Executive Law § 63(12), the OAG's first cause of action.

Defendants argue that the SFCs were not materially misleading, claiming, *inter alia* that: (1) "[t]here is no such thing as objective value"; (2) "a substantial difference between valuation in the SOFCs and appraisal, per se, is not evidence of inflated values"; (3) there is nothing improper about using "fixed assets" valuations as opposed to using the current market valuation approach; and (4) it was proper to include "internally developed intangibles, such as the brand premium used in the valuation of President Trump's golf clubs, in personal financial statements." NYSCEF Doc No. 1292 at 20-23.

Thus, defendants essentially argue that value is inherently subjective; that because internal brand valuations are in the eye of the beholder (here, Donald Trump), they cannot be overvalued. Defendants argue that "[n]o bank or underwriter would have reasonably been materially misled by the alleged misstatements or omissions in the SOFCs and other information the Defendants

made available to their counterparties because no sophisticated counterparty would have considered the SOFCs and other information provided by the Defendants alone as material to extend credit or set an interest rate, or issue an insurance policy or price a risk, without doing their own due diligence." NYSCEF Doc. No. 835 at 45.

Defendants also argue: "[i]t follows that if the user [of the SFCs] is in possession of the correct information, then the financial statements are not materially misstated." Id. at 39. Defendants' stance is, practically speaking, that they may submit false SFCs so long as the recipients know, from their own due diligence, that the information is false.

Accepting defendants' premise would require ignoring decades of controlling authority holding that financial statements and real property valuations are to be judged objectively, not subjectively. FMC Corp. v Unmack, 92 NY2d 179, 191 (1998) ("*objectively* reasonable conclusion, drawn by a competent and experience appraiser, was based on credible evidence" that demonstrated "property was overvalued") (emphasis added); Assured Guar. Mun. Corp. v DLJ Mortg. Cap. Inc., 44 Misc 3d 1206(A) (Sup Ct, NY County 2014) ("Credit Suisse is reading this as a subjective standard, dependent on Assured's expectations. Credit Suisse is wrong. It is well settled that this is an objective standard").

Moreover, courts have long found that "generally, it is the 'market value' which provides the most reliable valuation for assessment purposes." Great Atl. & Pac. Tea Co. v Kiernan, 42 NY2d 236, 239 (1977); Consol. Edison Co. of New York v City of New York, 33 AD3d 915, 916 (2d Dept 2007) ("the standard for assessment remains market value"), affd 8 NY3d 591. Beauty may be in the eye of the beholder, but value is in the eye of the marketplace.

Further, defendants' assertion that the discrepancies between their valuations and the OAG's are immaterial is nonsense. What OAG has established, in many cases by clear, indisputable documentary evidence (as discussed *infra*), is not a matter of rounding errors or reasonable experts disagreeing. OAG has submitted conclusive evidence that between 2014 and 2021, defendants overvalued the assets reported in the SFCs between 17.27-38.51%; this amounts to a discrepancy of between $812 million and $2.2 billion dollars. NYSCEF Doc. No. 766 at 70. Even in the world of high finance, this Court cannot endorse a proposition that finds a misstatement of at least $812 million dollars to be "immaterial." Defendants have failed to identify any authority for the notion that discrepancies of the magnitude demonstrated here could be considered immaterial.

The Second through Seventh Causes of Action

The Second, Third, Fourth, Fifth, Sixth, and Seventh causes of action allege violations of Executive Law § 63(12) based on underlying violations of the New York Penal Law prohibiting falsification of business records, issuance of false financial statements, and insurance fraud.

Liability under New York Penal Law § 175.05 (falsifying business records in the second degree) requires that a person "[m]akes or causes a false entry in the business records of an enterprise."

Liability under New York Penal Law § 175.45 (issuing a false financial statement) requires that a person "represents in writing that a written instrument purporting to describe a person's financial

condition or ability to pay as of a prior date is accurate with respect to such person's current financial condition or ability to pay, whereas [that person] knows it is materially inaccurate in that respect."

Liability under New York Penal Law § 176.05 (insurance fraud) requires that a person submitted an application for insurance either: (1) knowing that it "contain[ed] materially false information concerning any fact material thereto"; or (2) "conceal[ed], for the purpose of misleading, information concerning any fact material thereto."

Accordingly, unlike a standalone cause of action under Executive Law § 63(12). the second through seventh causes of action require demonstrating some component of intent and materiality. People v Alamo Rent A Car, Inc., 174 Misc 2d 501, 505 (Sup Ct, NY County 1997) ("As in all other situations requiring *mens rea*, however, petitioners may prove, by reference to facts and circumstances surrounding the case, that respondents knew that their conduct was unlawful. Moreover, petitioners need not prove respondents acted with an 'evil motive, bad purpose or corrupt design'") (internal citations omitted).

OAG has demonstrated that there remain, at the very least, disputed issues of fact as to whether defendants violated these statutes, intentionally and materially. Thus, there are issues of fact as to causes of action two through seven that require a trial.

The Court has considered defendants' remaining arguments and finds them to be unavailing and/or non-dispositive.

Accordingly, defendants' motion for summary judgment dismissing every cause of action is denied in its entirety.

OAG'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ITS FIRST CAUSE OF ACTION

Summary Judgment Burden on Standalone Executive Law § 63(12) Cause of Action

OAG moves for partial summary judgment, seeking to hold defendants liable under OAG's first cause of action, for fraud under Executive Law § 63(12).

As this Court has noted *ad nauseum*, Executive Law § 63(12) "authorizes the Attorney General to bring a special proceeding against any person or business that engages in repeated or persistent fraudulent or illegal conduct, while broadly construing the definition of fraud so as to include acts characterized as dishonest or misleading and eliminating the necessity for proof of an intent to defraud." People v Apple Health & Sports Club, Ltd., Inc., 206 AD2d 266-267 (1st Dept 1994).

As OAG's first cause of action, the only one upon which it moves for summary judgment, alleges a standalone violation of Executive Law § 63(12), OAG need only prove: (1) the SFCs were false and misleading; and (2) the defendants repeatedly or persistently used the SFCs to transact business.

This instant action is essentially a "documents case." As detailed *infra,* the documents here clearly contain fraudulent valuations that defendants used in business, satisfying OAG's burden to establish liability as a matter of law against defendants. Defendants' respond that: the documents do not say what they say; that there is no such thing as "objective" value; and that, essentially, the Court should not believe its own eyes.[9]

The defenses Donald Trump attempts to articulate in his sworn deposition are wholly without basis in law or fact. He claims that if the values of the property have gone up in the years since the SFCs were submitted, then the numbers were not inflated at that time (i.e.; "But you take the 2014 statement, if something is much more valuable now – or, I guess, we'll have to pick a date which was a little short of now. But if something is much more valuable now, then the number that I have down here is a low number"). NYSCEF Doc. No. 1363 at 69-75). He also seems to imply that the numbers cannot be inflated because he could find a "buyer from Saudi Arabia" to pay any price he suggests.[10] Id. at 30-33, 60-62, 79-80.

The Trump Tower Triplex

This Court takes judicial notice that the Trump Tower apartment in which Donald Trump resided for decades (the "Triplex") is 10,996 square feet. NYSCEF Doc. No. 816 at 2. Between 2012-2016, Donald Trump submitted SFCs falsely claiming that the Triplex was 30,000 square feet, resulting in an overvaluation of between $114-207 million dollars. NYSCEF Doc. Nos. 782 at Rows 833-834, 1028, 783 at Rows 799-800, 1199, 784 at Rows 843-844, 785 at Rows 882-883, 789 at Row 913, 817. The misrepresentation continued even after defendants received written notification from *Forbes* that Donald Trump had been overestimating the square footage of the Triplex by a factor of three.[11]

In opposition, defendants absurdly suggest that "the calculation of square footage is a subjective process that could lead to differing results or opinions based on the method employed to conduct the calculation.[12]" NYSCEF Doc. No. 1293 at 20. Well yes, perhaps, if the area is rounded or oddly shaped, it is possible measurements of square footage could come to slightly differing results due to user error. Good-faith measurements could vary by as much as 10-20%, not 200%.

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[9] As Chico Marx, playing Chicolini, says to Margaret Dumont, playing Mrs. Gloria Teasdale, in "Duck Soup," "well, who ya gonna believe, me or your own eyes?"

[10] This statement may suggest influence buying more than savvy investing.

[11] Three days after receiving a written inquiry from *Forbes*, Trump Organization Vice President, Amanda Miller, sent an email to Trump Organization Executive Vice President and Chief Legal Officer, Alan Garten, indicating that she "spoke to Allen W[eisselberg] re: [Trump World Tower and Trump Tower] – we are going to leave those alone." NYSCEF Doc. No. 821. Although OAG need not show intent to deceive under a standalone § 63(12) cause of action, this directive to continue to use a grossly inflated number despite clear knowledge it is false demonstrates the repetitive and ongoing nature of defendants' propensity to engage in fraud.

[12] Despite this assertion in their motion papers, counsel for defendants, Christopher Kise, Esq, conceded during oral argument held on September 22, 2023, that square footage is, in fact, an objective number.

A discrepancy of this order of magnitude, by a real estate developer sizing up his own living space of decades, can only be considered fraud.[13]

OAG unquestionably satisfies its two-prong burden of demonstrating the SFCs from 2012-2016 calculated the value of the Triplex based on a false and misleading square footage, and that some of the defendants repeatedly and persistently used the SFCs to transact business.

Seven Springs Estate

Defendant Seven Springs LLC owns over 200 acres of contiguous land in the towns of Bedford, New Castle and North Castle in Westchester County, New York.

In 2000, non-party the Royal Bank of Pennsylvania appraised the "as is" market value of Seven Springs to be $25 million if converted to residential development. NYSCEF Doc. No. 825. In 2006, the same bank performed a new appraisal, which showed Seven Springs had an "as is" market value of $30 million. NYSCEF Doc. No. 826.

In 2012, Seven Springs LLC received another appraisal that estimated a six-lot subdivision on the New Castle portion of the property to have a fair market value of approximately $700,000 per-lot. NYSCEF Doc. No. 829 at 203-206.

In July 2014, because the Trump Organization was considering donating a conservation easement, it retained Cushman & Wakefield to provide a "range of value" of the Seven Springs property. NYSCEF Doc. Nos. 830, 831. Cushman & Wakefield's appraiser, David McArdle, analyzed the sale of eight lots in Bedford, six lots in New Castle, and ten lots in North Castle and determined the fair market value for all 24 lots was approximately $30 million. NYSCEF Doc. No. 831, 832.

Notwithstanding receiving market values from professional appraisals in 2000, 2006, 2012, and 2014 valuing Seven Springs at or below $30 million, Donald Trump's 2011 SFC reported the value to be $261 million, and his 2012, 2013 and 2014 SFCs reported the value to be $291 million.[14] NYSCEF Doc. Nos. 769, 770, 771, 772.

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[13] In fact, OAG demonstrates that as of 2012, no apartment sold in New York City had ever approached the price at which defendants valued the Triplex, noting that the highest overall sale at that time was $88 million for a Central Park West penthouse. The SFCs valued the Triplex at a staggering $180,000,000-$327,000,000 for the years 2012-2016. NYSCEF Doc. No. 1 at ¶276.

[14] The statutes of limitations have run for all claims that accrued before July 13, 2014. However, although not actionable by themselves, evidence of fraud that predates July 13, 2014, may still be used as evidence in evaluating OAG's request for permanent injunctive relief, wherein the Court must determine whether there has been "a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d 490, 496-97 (2016) (detailing standard for permanent injunctive relief under Executive Law 63(12) and "reject[ing] defendants' arguments that the Attorney General must show irreparable harm in order to obtain a permanent injunction").

In early 2016, Cushman & Wakefield performed another appraisal of Seven Springs, which included the planned development, and determined that as of December 1, 2015, the entire parcel was worth $56.6 million. NYSCEF Doc. Nos. 824 at 9; 875; 876.

Even giving defendants the benefit of the $56.6 million figure as of December 1, 2015, the value submitted on Donald Trump's 2014 SFC was inflated by over 400%. Accordingly, OAG has demonstrated liability for the false 2014 SFC for fraudulently inflating the value of Seven Springs.

Trump Park Avenue

Trump Park Avenue is a residential building included as an asset on Donald Trump's SFCs for the years 2011-2021. NYSCEF Doc. Nos. 769-779. In 2011, 12 of the unsold residential condominium units were subject to New York City's rent regulation laws. NYSCEF Doc. No. 948 at 3. By 2014, nine units remained subject to rent restrictions. NYSCEF Doc. No. 966. By 2020, six units remained subject to rent restrictions. NYSCEF Doc. No. 971.

A 2010 appraisal performed by the Oxford Group valued the 12 rent-stabilized units at $750,000 total, or $62,500 per unit. NYSCEF Doc. No. 952. A 2020 appraisal performed by Newmark Knight Frank valued the six units that remained subject to stabilization at $22,800,090 total, or $3,800,315 per unit. NYSCEF Doc. No. 972.

Notwithstanding, for the years 2014-2021, the Trump Organization submitted SFCs that valued these rent-restricted units as if they were unencumbered, inflating the value of each unit between as much 700% (in 2014) and 64% (in 2021). NYSCEF Doc. Nos. 772-779.

In an unsuccessful attempt to rebut OAG's prima facie demonstration, defendants proffer that the units are not overvalued because "the rent-stabilized units have the potential at some point in the future to be converted into unencumbered (by rent stabilization) units."[15] NYSCEF Doc. No. 1292 at 57. They further concede that "[t]his is the assumption the owner made when assessing potential asset pricing or value." Id.

[15] As every New Yorker knows, rent regulated units may be passed on from one generation to the next in perpetuity.

However, the SFCs are required to state "current" values, not "someday, maybe" values. At the time defendants provided the subject SFCs to third parties they unquestionably falsely inflated the value of the units based on a false premise that they were unrestricted.[16]

40 Wall Street

The Trump Organization, through defendant 40 Wall Street LLC, owns a ground lease at 40 Wall Street and pays ground rent to the landowner.

In 2010, Cushman & Wakefield appraised the Trump Organization's interest in 40 Wall Street at $200 million. NYSCEF Doc. Nos. 878-79. Cushman & Wakefield appraised again in 2011 and 2012, reaching valuations of between $200 and $220 million. NYSCEF Doc. Nos. 881-82. The Trump Organization possessed and was familiar with these appraisals. NYSCEF Doc. Nos. 817 at 135-138; 883.

Despite these appraisals, the 2011 and 2012 SFCs valued the Trump Organization's interest in the property at $524.7 million and $527.2 million, respectively, an overvaluation of more than $300 million each year.[17] NYSCEF Doc. Nos. 769, 770.

In 2015, Cushman & Wakefield once again appraised the property, and valued it at $540 million.[18] NYSCEF Doc. No. 887. Notwithstanding this appraised value, the 2015 SFC listed the value of 40 Wall Street at $735.4 million.[19] NYSCEF Doc. No. 773.

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[16] Mazars accountant Donald Bender testified that when he asked Jeffrey McConney, "Do you have any other appraisals?", Jeffrey McConney stated "I have nothing else," demonstrating an intent to conceal or mislead the accountants. NYSCEF Doc. No. 1262 at 243.

Further, Patrick Birney, a Trump Organization employee working directly under Jeffrey McConney, conceded that the Trump Organization maintained a spreadsheet for day-to-day operations on the Trump Park Avenue offering plan that included both the offering plan prices *and* the current market values, but that the Trump Organization concealed its own actual market estimates from Mazars by omitting the market value column in its spreadsheet and providing Mazars with only the offering plan prices. NYSCEF Doc. No. 946.

[17] Although any liability arising out of the submission of the 2011 and 2012 SFCs is time barred; as previously discussed, these submissions may be considered as evidence in support of OAG's request for injunctive relief.

[18] OAG plausibly asserts that this $540 million is also inflated; however, for purposes of this motion, OAG does not dispute the number, and argues that, even if the Court were to accept defendants' number as accurate, the 2015 SFC was still materially false, as it stated the value as nearly $200 million more than the $540 million appraisal. NYSCEF Doc. No. 766 at n 7.

[19] An email exchange dated August 4, 2014, between Allen Weisselberg and his son, Jack Weisselberg, a Ladder Capital employee, discusses the 2015 $540 million Cushman & Wakefield appraisal. NYSCEF Doc. No. 888. Notwithstanding direct knowledge of it, the 2015 SFC valued 40 Wall Street at nearly $200 million more. NYSCEF Doc. No. 773.

Defendants assert that overvaluations of two hundred million dollars are immaterial, as the "NYAG has produced no evidence to suggest... that Ladder Capital would have been uncomfortable allowing President Trump to guarantee the 40 Wall Street Loan if his net worth was only $1.9 billion, as the NYAG contends." NYSCEF Doc. No. 835 at 48. They further emphasize that "Ladder Capital has received in excess of $40 million in interest and 40 Wall Street LLC has never defaulted under the Loan."[20] Id.

Defendants' argument misses the mark. As has been explained to defendants many times, in many legal proceedings, and in painstaking detail, "where, as here, there is a claim based on fraudulent activity [under Executive Law 63(12)], disgorgement may be available as an equitable remedy, *notwithstanding the absence of loss to individuals or independent claims for restitution.*" Ernst & Young at 569 (emphasis added). Accordingly, it is not significant that the banks made money (or did not lose money)[21], or that they would have done business with the Trump Organization notwithstanding. The law is clear that the only requirements for liability to attach under a standalone Executive Law § 63(12) cause of action are (1) a finding that the SFCs were false and misleading; and (2) that defendants repeatedly or persistently used the SFCs to conduct business.

Accordingly, OAG has demonstrated liability for the false valuation of 40 Wall Street in the 2015 SFC.

Mar-a-Lago

Donald Trump purchased Mar-a-Lago in 1985. In 1993, he sought, and obtained, permission from the Town of Palm Beach to turn the property into a social club (NYSCEF Doc. No. 900), and on August 10, 1993, he entered into a "Declaration of Use Agreement" by which he agreed "the use of Land shall be for a private social club" and that "[a]ny additional uses of the Land shall be subject to approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Landmarks Preservation Commission of the Town, the Architectural Review Commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or any agencies under the foregoing governmental authorities." NYSCEF Doc. No. 915.

In 1995, Donald Trump signed a "Deed of Conservation and Preservation Easement" in which he gave up his right to use Mar-a-Lago for any purpose other than as a social club (the "1995 Deed"). NYSCEF Doc. No. 901. In 2002, Donald Trump signed a "Deed of Development Rights." NYSCEF Doc. No. 902. As part of granting a conversation easement to the National

[20] The defendant borrowers did not default on any loans; but we only know that with hindsight. Markets are volatile, and borrowers come in all shapes and sizes. The next borrower, or the one after that, might default, and if its SFCs are false, the lender might unfairly be left holding the bag. This will distort the lending marketplace and deprive other potential borrowers of the opportunity to obtain loans and create wealth.

[21] The subject loans made the banks lots of money; but the fraudulent SFCs cost the banks lots of money. The less collateral for a loan, the riskier it is, and a first principal of loan accounting is that as risk rises, so do interest rates. Thus, accurate SFCs would have allowed the lenders to make even more money than they did.

Trust for Historic Preservation, Donald Trump agreed that "Trump intend[s] to forever extinguish [his] right to develop or use the Property for any purpose other than club use" (the "2002 Deed"). The 2002 Deed also specifically "limits changes to the Property including, without limitation, the division or subdivision of the Property for any purpose, including use as single family homes, the interior renovation of the mansion, which may be necessary and desirable for the sale of the Property as a single family residential estate, the construction of new buildings and the obstruction of open vistas." Id. In exchange for granting the easement, Mar-a-Lago was taxed at a significantly lower rate (the club rate) than it otherwise would have been (the private home rate). NYSCEF Doc. No. 903.

From 2011-2021, the Palm Beach County Assessor appraised the market value of Mar-a-Lago at between $18 million and $27.6 million. NYSCEF Doc. No. 905.

Notwithstanding, the SFCs' values do not reflect these land use restrictions. Donald Trump's SFCs for 2011-2021 value Mar-a-Lago at between $426,529,614 million and $612,110,496, an overvaluation of *at least 2,300%*, compared to the assessor's appraisal. NYSCEF Doc. Nos. 769-779.

In an attempt to rebut the OAG's demonstration, defendants rely on the opinion affidavit of Lawrence Moens, who they purport is "the most accomplished and knowledgeable ultra-high net worth real estate broker in Palm Beach, Florida."[22] Moens claims that "the SOFC were and are appropriate and indeed *conservative*." NYSCEF Doc. No. 1292 at 35-36 (emphasis added). The Moens' affidavit states in a conclusory fashion that because he believes "this unique property offers to an elite purchaser the unparalleled opportunity to own an exclusive and extensive family compound in the most desirable sections of Palm Beach... the valuations in the SOFC were reasonable and below my estimate for the market value of the property each year." NYSCEF Doc. No. 1435. Moreover, Moens opines that "[i]f Mar-A-Lago was available for sale, I am confident that in short order, I would be in a position to produce a ready, willing and able buyer who would have interest in securing the property for their personal use as a residence, or even, their own club." Id. at 29. Critically, Moens does not opine *at what price* he is "confident" he could find a buyer (although he opines separately, without relying on any objective evidence, that he believes that as of 2023 the property is worth $1.51 *billion*[23]).

It is well-settled that: "[w]here the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation, however, the opinion should be given no probative force and is insufficient to withstand summary judgment." Diaz v New York Downtown Hosp., 99 NY2d 542, 544 (2002); see also Gardner v Ethier, 173 AD2d 1002, 1003-4 (3d Dept 1991) ("the expert

[22] At oral argument, his domain of expertise was enlarged to nationwide status.

[23] In his sworn deposition, when asked "[w]ho were the dozen or so [qualified] buyers that you were referencing in your report, Lawrence Moens replied: "I could dream up anyone from Elon Musk to Bill Gates and everyone in between. Kings, emperors, heads of state. But with net worths in the multiple billions. I don't know how many people in the world have a net worth of more than $10 billion, but I think it's quite a number. There are a lot." NYSCEF Doc. No. 1428 at 184-185. Obviously, this Court cannot consider an "expert affidavit" that is based on unexplained and unsubstantiated "dream[s]."

affidavit is also inadmissible because it is conclusory and the views are apparently based to a great extent on hearsay statements from unspecified witnesses as well as upon speculations on the part of the expert"). Accordingly, defendants' reliance on the Moens affidavit is unpersuasive and certainly insufficient to rebut OAG's prima face case.

Defendants further imply that they may ignore the plain language of the 2002 Deed restrictions because they would likely be able to use the Florida judicial system to get out of their contractual requirements; they further assert that because they may successfully breach their contract in the future, they were not required to consider the restrictions of the 2002 Deed when valuing the property. NYSCEF Doc. 1292 at 48-51. This argument is wholly without merit. At the time in which the defendants submitted the SFCs, the restrictions were in effect, and any valuations represented to third-parties must have incorporated those restrictions; failure to do so is fraud. Assets values that disregard applicable legal restrictions are by definition materially false and misleading.

Accordingly, OAG has demonstrated liability for the false valuation of Mar-a-Lago as appears in the SFCs from 2014-2021.

Aberdeen

The Trump Organization owns a golf course located in Aberdeen, Scotland ("Aberdeen"). The value assigned to Aberdeen was comprised of two parts: a value for the golf course and a value for the development of the non-golf course property, the latter of which is the focus here. Developing any of the non-golf course property required that the local Scottish authorities approve any proposed plans.

From 2011-2014, Donald Trump's SFC reported that he had "received outline planning permission [from local Scottish authorities] in December 2008 for... a residential village consisting of 950 holiday homes and 500 single family residences and 36 golf villas." NYSCEF Doc. Nos. 769-776.

The Trump Organization had "outline planning permission" to build a total of 1,486 homes. Notwithstanding, the 2014-2018 SFCs valuations of Aberdeen assumed the Trump Organization had received approval to build 2,500 homes, despite never having received such approval. NYSCEF Doc. Nos. 772-776, 907.

Additionally, the approval of the 950 holiday homes and 36 golf villas came with severe restrictions on their use: they could be used solely as rental properties and could be rented for no more than 12 weeks in any calendar year. NYSCEF Doc. No. 908 at 13. The Trump Organization submitted financial documentation to the local Scottish authorities representing that these short-term rentals would not be profitable and therefore would not add any value to Aberdeen. NYSCEF Doc. Nos. 909 at 36, 910 at 7. Consequently, the only profitable development of Aberdeen would have been the 500 single family residences. In July 2017, non-party Ryden LLP, acting on behalf of the Trump Organization, prepared a development appraisal for Aberdeen wherein it assessed the profit from developing 557 homes and estimated profits in the range of £16,525,000-£18,546,000. NYSCEF Doc. No. 1231 at 10.

In May 2018, the Trump Organization applied to the Aberdeen City Council to reduce the scope of the development project to 550 dwellings, consisting of 500 private residences, 50 leisure/resorts units, and zero holiday homes (having determined they were not profitable). NYSCEF Doc. No. 911. In September 2019, the Aberdeen City Council approved the proposal for a reduction in the proposed development, but restricted the 50 leisure/resort units, as they had the holiday homes, to be "occupied on a holiday letting or fractional ownership basis only and for no other purposes whatsoever including use as a permanent residential unit... ." NYSCEF Doc. No. 907 at 7.

Notwithstanding, the 2019 SFC, finalized a month after the latest approval, derived a value based on the assumption that 2,035 private residential homes could be developed. Adjusting the values to reflect the permissible 500 private residences reduces the value of the Aberdeen undeveloped property as reflected in the 2019 SFC by £164,196.704. NYSCEF Doc. No. 777 at 16, 789 at Cells G561-619, 912.

Although defendants wholly fail to address Aberdeen in any of their three memos of law, in their response to OAG's statement of material facts, they state that "Defendants dispute the veracity of the appraisal because President Trump, as a land developer, took optimistic views of potential future value which is not contemplated in the appraisal, thereby undervaluing Trump Aberdeen." NYSCEF Doc. No. 1293 at 82-83. For all the reasons discussed *supra*, this defense fails.

Accordingly, OAG has demonstrated liability for the false valuation of Aberdeen as appears in the SFCs from 2014-2019.

US Golf Clubs

Donald Trump owns or leases a number of golf clubs across the United States and abroad that are included as assets on his SFCs. NYSCEF Doc. Nos. 769-779. The value for these golf clubs is provided in the aggregate in the SFCs, although supporting accounting spreadsheets evidence the breakdown of the values assigned to each club. NYSCEF Doc. Nos. 781-791.

The "Trump Brand Premium"

The evidence indicates that for the years 2013-2020, the SFCs relied on values that included a 15% or 30% "premium" based on the "Trump brand" for the following seven golf clubs: Trump National Golf Course ("TNGC") Jupiter, TNGC LA, TNGC Colts Neck, TNGC Philadelphia, TNGC DC, TNGC Charlotte, and TNGC Hudson Valley. NYSCEF Doc. Nos. 783-790. However, the SFCs for those years (and, indeed, all the years before this Court), also contained express language stating: "The goodwill attached to the Trump name has significant value that has *not* been reflected in the preparation of this financial statement." NYSCEF Doc. Nos. 769-779 (emphasis added). Accordingly, the SFCs "double dip," both purporting not to include a brand premium while simultaneously including one of 15% or 30%.

In opposition, defendants submit the affidavit of Eli Bartov, an accounting professor at New York University, who distinguishes between overall brand value and brand value ascribed to individual golf courses. His point, ensconced in numerous lines of academic jargon, seems to be that defendants said that they were eschewing the former and opting only for the latter. NYSCEF Doc. No. 1378 at 14-15. This is a red herring and factually incorrect. The SFCs

clearly state that they do not include a brand value for *any* of the properties included in the SFCs; indeed, the SFCs emphatically declare that "[t]he goodwill attached to the Trump name has significant financial value *that has not been reflected in the preparation of this financial statement.*" NYSCEF Doc. Nos. 769-779 (emphasis added). Perhaps Donald Trump could have ascribed a brand value to golf courses that he viewed as "special," but he was obligated to disclose those exceptions when he represented that the SFCs did not reflect his brand value.

TNGC Briarcliff and TNGC LA

The valuations of TNGC Briarcliff and TNGC LA were each comprised of a value for the golf course and a value for the undeveloped land. As the Trump Organization was considering donating a conservation easement over both properties, they had both properties appraised.

An April 2014 appraisal valued the golf club portion of TNGC Briarcliff at $16,500,000; later that same year, Donald Trump valued the golf club portion of TNGC Briarcliff at $73,430,217, *an inflation of more than 300%*, in his SFC. NYSCEF Doc. Nos. 923 at 147; 785 at Row 257. A 2015 appraisal valued the golf club portion of TNGC LA at $16,000,000 as of December 26, 2014; the 2015 SFC valued the golf club portion of TNGC LA at $56,615,895, *an inflation of more than 200%.* NYSCEF Doc. Nos. 924 at 151; 785 at Row 386.

In an attempt to rebut this strong showing of fraud, defendants argue that they were not obligated to use market value, but, instead, were permitted to use the "fixed assets" approach to valuation, pursuant to which defendants may "value" a property by aggregating the money spent to acquire and maintain a property. NYSCEF Doc. No. 1292. They further rely on the Bartov affidavit, which states, in wholly conclusory fashion that: "[t]he assertion that 'Using fixed assets approach does not present the golf clubs at their estimated current value because the approach ignores market conditions and the behavior of informed buyers and sellers' is unsubstantiated and false." NYSCEF Doc. No. 1378 at 29.

Bartov is incorrect. Each of the corresponding SFCs include representations that "[a]ssets are stated at their estimated current values..." NYSCEF Doc. Nos. 769-779.[24] Accordingly, it is false and misleading to use a fixed-assets evaluation, which is completely different. The price for which you purchase property is not necessarily the price for which you can sell it. The latter, not the former, matters to lenders who want adequate collateral.

The Membership Liabilities

As part of the purchase of several of the golf club properties, Donald Trump agreed to assume the obligation to pay back refundable non-interest-bearing long-term membership deposits. However, notwithstanding that these liabilities must be satisfied in the future, the SFCs from 2012-2021 value them at $0. NYSCEF Doc. Nos. 769-779. This is false; they are a liability in the millions of dollars.

[24] In their response to OAG's statement of material facts, defendants concede that "GAAP defines Estimated Current Value as 'the amount at which the item could be exchanged between a buyer and seller, each of whom is well informed and willing, and neither of whom is compelled to buy or sell." NYSCEF Doc No. 1293 at 17.

However, the SFCs all state: "The fact that Mr. Trump will have the use of these funds for that period without cost and that the source of repayment will most likely be a replacement membership has led him to value this liability at zero." See e.g., NYCSCEF Doc. No. 772.

Although it was false to report the membership liabilities as $0, it was not, under the circumstances, *misleading*, as the SFCs state that the reason for so doing. Accordingly, OAG cannot prevail on liability as a result of the failure to report the membership liabilities.

Yet, as discussed *supra*, OAG has demonstrated liability for submitting fraudulent SFCs in 2014-2020 that falsely value the aforementioned US Golf Clubs based on undisclosed brand premiums and failure to report "current" values.

Vornado Partnership Properties

Donald Trump has a 30% limited partnership interest with non-party Vornado Realty Trust in entities that own office buildings in New York City (at 1290 Avenue of the Americas, hereinafter "1290 AOA") and San Francisco at 555 California Street.

Cash/Liquid Classification

Donald Trump's 30% limited partnership stake does not permit him to use or withdraw funds held by the partnerships. NYSCEF Doc. Nos. 916, 917. Notwithstanding, Donald Trump and his trustees classified his 30% interest in the Vornado partnership as a liquid/cash asset on his SFCs for the years 2013-2021. NYSCEF Doc. No. 771-779. This was even though it is "undisputed" by defendants that Donald Trump does not have "the right to use or withdraw [these] funds." NYSCEF Doc. No. 1293 at ¶387-388.

Defendants assert that "[e]ven if the cash held in the partnership was misclassified and should have been reported elsewhere on the SOFCs as an asset (e.g., in the value of the partnership interest), it would not have inflated the total value of cash or President Trump's net worth reported on the SOFCs." NYSCEF Doc No. 1292 at 39.

This argument does not hold any water. Put simply, it was false and misleading for defendants to indicate that it had access to between $14,221,800 and $93,126,589 in liquid assets, sometimes nearly a third of the total cash it claimed, when in fact those assets were completely illiquid. NYSCEF Doc. No. 1293 ¶ 403.

The Appraisals

Cushman & Wakefield appraised the value of 1290 AOA at $2 billion as of November 1, 2012, and $2.3 billion as of November 1, 2016. NYSCEF Doc. No. 919 at 5-6.

However, Donald Trump's 2014 SFC calculated his 30% share based on a purported value of $3,078,338,462; his 2015 SFC was based on a purported value of $2,985,819,936; and his 2016 SFC was based on a purported value of $3,055,000,000. NYSCEF Doc. Nos. 784 at Rows 709-715, 785 at Rows 748-755, 785 at Rows 779-784. This resulted in overvaluations of Donald Trump's 30% interest in 1290 AOA of between $205-$233 million dollars for those years.

CBRE appraised 1290 AOA and determined its value at $2 billion as of October 7, 2021. NYSCEF Doc. No. 947. Nonetheless, the 2021 SFC was calculated based upon a purported value of $2,574,813,800, an overvaluation of Donald Trump's 30% share by $172 million dollars. NYSCEF Doc. No. 791 at Row 918.

The instant motions do not task this Court with determining which appraisals are the most accurate, which would present issues of fact.[25] Rather, time and time again, the Court is not comparing one appraisal to another; it is comparing an independent professional appraisal to a pie-in-the-sky dream of concocted potential.

Accordingly, OAG has demonstrated liability for submitting fraudulent SFCs overvaluing Donald Trump's interest in the Vornado partnership in 2014-2016 and 2021.

Licensing Deals

Each of Donald Trump's SFCs from 2011-2021 has an asset category entitled "Real Estate Licensing Deals," which the SFC represents is value derived from "associations with others for the purpose of developing and managing properties" and the "cash flow that is expected to be derived... from these associations as their potential is realized." NYSCEF Doc. Nos. 769-779. The SFCs further state that "[i]n preparing [these] assessment[s], Mr. Trump and his management considered only situations which have evolved to the point where signed arrangements with the other parties exist and fees and other compensation which he will earn are reasonably quantifiable." Id.

Despite this express language, the SFCs from 2014-2018 and 2020-2021 include valuations of intra-organization deals, all between entities under the Trump Organization umbrella, in this category of assets. NYSCEF Doc. Nos. 1014, 1018, 1019, 1021, 1023, 1024, 1062, 1063, 1064. It was flatly false and misleading to include values of deals between Trump Organization entities while expressly representing in the SFCs that such assets included only valuations derived from "association with others." Improperly including these intra-organization deals resulted in an overvaluation of up to $224 million in 2014, $110 million in 2015, $120 million in 2016, $113 million in 2017, $115 million in 2018, $97 million in 2020, and $106 million in 2021. Id.

OAG has demonstrated liability for the false and misleading valuation of intra-company licensing deals on the SFCs from 2014-2018 and 2020-2021.

The Other Loans

OAG has established that defendants submitted false SFCs after July 13, 2014, pursuant to their other loan commitments. Defendants submitted SFCs to Deutsche Bank as part of their contractual obligations arising out of three different loans: (1) a Chicago Loan, undertaken by 401 North Wabash Venture LLC; (2) a Doral Loan, undertaken by Trump Endeavor LLC; and (3) an Old Post Office Loan, undertaken by Trump Old Post Office LLC. Defendants certified the accuracy of these SFCs to Deutsche Bank for the years 2014-2019 and 2021[26] as part of their

[25] Nor is this Court asked to determine Donald Trump's total wealth.

[26] The gap for 2020 may have been due to the COVID-19 pandemic.

contractual obligations. NYSCEF Doc. Nos. 1097, 1098, 1099, 1100, 1102, 1104, 1106, 1124, 1126, 1155, 1156, 1157.

The Individual Defendants

OAG has demonstrated liability on behalf of all the named individual defendants: (1) **Donald Trump**, as each and every SFC was issued on behalf of "Donald J. Trump"; (2) **Donald Trump, Jr.**, who, along with Allen Weisselberg, certified the accuracy of the SFCs for 2016-2020, and who singlehandedly certified the accuracy of the 2021 SFC (NYSCEF Docs. No. 808-813); (3) **Eric Trump**, who is the listed source for the Seven Springs valuation in 2014,[27] and who signed several guarantor compliance certificates in 2020 and 2021 for Donald J. Trump (NYSCEF Doc. No. 802); (4) **Allen Weisselberg**, who certified the accuracy of the SFCs from 2014-2021 (NYSCEF Doc. Nos. 806-812); (5) and **Jeffrey McConney**, who led the process of preparing all the SFCs since the 1990s[28] (NYSCEF Doc. No. 822 at 52-68).

The Entity Defendants

It is settled law that "[a] parent corporation will not be held liable for the torts or obligations of a subsidiary *unless it can be shown that the parent exercised complete dominion and control over the subsidiary*." Potash v Port Auth. of New York & New Jersey, 279 AD2d 562, 562 (2d Dept 2001) (emphasis added). Here, it is undisputed that Donald Trump, through one corporate form or another, exercised complete control over the umbrella of entities operating in furtherance of, or on behalf of, "the Trump Organization."

Defendants do not dispute that DJT Holdings LLC and DJT Holdings Managing Member LLC are entities that sit at the top of the Trump Organization's organizational chart and together own many of the Trump-affiliated entities that comprise the Trump Organization. DJT Holdings Managing Member LLC owns 100% of the Trump Organization and DJT Holdings LLC owns 100% of the Trump Organization LLC. NYSCEF Doc. Nos. 4, 819 at ¶1.

Accordingly, OAG has established liability on behalf of all the named entity defendants: (1) **The Trump Organization Inc.**, **the Trump Organization LLC**, **DJT Holdings LLC**, and **DJT Holdings Managing Member LLC**, as each participated in the preparation, submission and certification of the SFCs after July 13, 2014 through the acts of the individual defendants as described *supra*; (2) the **DJT Revocable Trust**, as both Donald Trump Jr. and Allen Weisselberg certified the accuracy of the 2016-2019 SFCs in their capacities as "Trustee, the Donald J. Trump Revocable Trust dated April 7, 2014, as amended" (NYSCEF Doc. No. 808); (3) **Trump Endeavor LLC**, which was the borrower on the Doral Loan, for which SFCs were submitted after July 13, 2014; (4) **401 North Wabash Venture LLC**, which was the borrower on a loan for "Trump Chicago," under which SFCs were required to be (and were) submitted

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[27] Eric Trump also reaffirmed the SFCs accuracy on July 9, 2019. NYSCEF Doc. Nos. 782 at Row 679, 783 at Rows 638-40, 784 at Row 660, 1183.

[28] Jeffrey McConney acknowledged his personal role in preparing supporting data for Donald Trump's SFCs beginning in 2011, testifying that: "I assemble the documentation" and that he would send both supporting data spreadsheets and backup documentation to the accountants. He further conceded that the supporting data spreadsheets were referred to as "Jeff's supporting data" or "Jeff's supporting schedule." NYSCEF Doc. No. 822 at 40, 67-68, 212, 294.

after July 13, 2014; (5) **Trump Old Post Office LLC**, as it was the borrower on the "Old Post Office" loan, under which SFCs were required to be (and were) submitted after July 13, 2014; and **Seven Springs LLC**, the borrowing entity (as described *supra*) under which SFCs were required to be (and were) submitted after July 13, 2014.

Injunctive Relief

OAG has prevailed on liability on its first cause of action pursuant to Executive Law § 63(12) as against all defendants: Donald J. Trump; Donald Trump, Jr.; Eric Trump; Allen Weisselberg; Jeffrey McConney; the DJT Revocable Trust; the Trump Organization Inc; the Trump Organization LLC; DJT Holdings LLC; DJT Holdings Managing Member LLC; Trump Endeavor 12 LLC; 401 North Wabash Venture LLC; Trump Old Post Office LLC; 40 Wall Street LLC; and Seven Springs LLC.

If liability is established under Executive Law § 63(12), the statute itself provides that the attorney general may obtain "an order enjoining the continuance of such business activity or of any fraudulent or illegal acts... and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of ... section one hundred thirty of the general business law...."

"[T]he Attorney General may obtain permanent injunctive relief under... Executive Law § 63(12) upon a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d at 496-97 (further stating "[t]his is not a 'run of the mill' action for an injunction, but rather one authorized by remedial legislation, brought by the Attorney-General on behalf of the People of the State and for the purposes of preventing fraud and defeating exploitation") (internal citations omitted).

Having found, at the commencement of the action, that OAG had preliminarily demonstrated defendants' "propensity to engage in persistent fraud," this Court appointed the Hon. Barbara S. Jones (ret.) as an independent monitor "to ensure there is no further fraud or illegality that violates § 63(12) pending the final disposition of this action." NYSCEF Doc. No. 194. On August 3, 2023, Judge Jones reported as follows:

> [S]ince my appointment I have reviewed material financial and accounting information submitted by the Trump Organization. As part of my review, I have made preliminary observations regarding certain current financial disclosures with respect to the Trump Organization's reporting of financial information. Specifically, I have observed that information regarding certain material liabilities provided to lenders – such as intercompany loans between or among Trust entities and Donald J. Trump, certain of the Trust's contingent liabilities, as well as refundable golf club membership deposits—has been incomplete. The Trust also has not consistently provided all required annual and quarterly certifications attesting to the accuracy of certain financial statements.

> In addition, annual audited financial statements for certain entities, prepared by an external accounting firm, list depreciation expenses. However, interim internally prepared financial statements provided to third parties for these same entities inconsistently report depreciation expenses.

NYSCEF Doc. No. 647. Even with a preliminary injunction in place, and with an independent monitor overseeing their compliance, defendants have continued to disseminate false and misleading information while conducting business. This ongoing flouting of this Court's prior order, combined with the persistent nature of the false SFCs year after year, have demonstrated the necessity of canceling the certificates filed under GBL § 130, as the statute provides. People v Northern Leasing, 70 Misc 3d 256, 279-80 (Sup Ct, NY County 2020) (denying a trial on the petition and ordering the LLC respondents to dissolve upon a finding of persistent fraud under Executive Law § 63(12)).

Having prevailed on liability on a standalone Executive Law § 63(12) cause of action, the Attorney General is entitled to the first two prayers for relief sought in her complaint: (1) canceling any certificate filed under and by virtue of the provisions of New York General Business Law § 130 for all the entity defendants found liable, as well as any other entity controlled or beneficially owned by the individual defendants found liable herein, which and who participated in or benefitted from the foregoing fraudulent schemes; and (2) appointing an independent monitor to oversee compliance, financial reporting, valuations, and disclosures to lenders, insurers, and tax authorities at the Trump Organization. NYSCEF Doc. No. 1 at 213.

Remaining Issues to be Determined at Trial

Anything presented in the parties' moving papers that this Court has not ruled upon in this Decision and Order, including determinations on liability for the second through seventh causes of action, the amount of disgorgement of profits to which OAG is entitled, and determinations on the third through ninth prayers for relief sought by OAG in its complaint, presents disputed issues of fact that shall proceed to trial.

Conclusion

For the reasons stated herein, it is hereby

ORDERED that defendants' motion for summary judgment is denied; and it is further

ORDERED that plaintiff's motion for sanctions is granted in part, to the extent of sanctioning Michael Madaio, Esq. (Habba Madaio & Associates, LLP), Clifford S. Robert, Esq. (Robert & Robert PLLC), Michael Farina Esq. (Robert & Robert PLLC), Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC), and Armen Morian (Morian Law PLLC) in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Decision and Order; and it is further

ORDERED that plaintiff's motion for partial summary judgment on its first cause of action is granted in part, to the extent of finding defendants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, the DJT Revocable Trust, the Trump Organization Inc, the Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC to be liable as a matter of law for persistent violations of Executive Law § 63(12); and it is further

ORDERED that any certificates filed under and by virtue of GBL § 130 by any of the entity defendants or by any other entity controlled or beneficially owned by Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney are canceled; and it is further

ORDERED that within 10 days of the date of this order, the parties are directed to recommend the names of no more than three potential independent receivers to manage the dissolution of the canceled LLCs; and it is further

ORDERED that the Hon. Barbara S. Jones (ret.) shall continue to serve as an independent monitor of the Trump Organization until further Court order; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

9/26/2023
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[X]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

vs.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC,

Defendants.

Index No. 452564/2022

AFFIRMATION OF SERVICE

Motion Seq. No. 028

CHRIS D. KRIMITSOS, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms the following statements to be true under the penalty of perjury:

1. I am an associate of the law firm of Robert & Robert PLLC, and am not a party to the above-captioned action.

2. On October 23, 2023, I served the within Notice of Appeal and Informational Statement, both dated October 23, 2023, together with a copy of the Decision and Order of the Supreme Court of the State of New York, New York County (Honorable Arthur F. Engoron, J.S.C.), dated September 26, 2023, with Notice of Entry, upon the following parties, at the addresses listed after each party's name, by depositing a true copy of same enclosed in a postpaid

properly addressed wrapper in official deposit under the exclusive care and custody of the United States Postal Service within the State of New York:

Kevin C. Wallace, Esq.
Colleen K. Faherty, Esq.
Office of the New York State Attorney General
28 Liberty Street
New York, New York 10005
Counsel for Plaintiff

Alina Habba, Esq.
Michael Madaio, Esq.
Habba Madaio & Associates, LLP
112 West 34th Street, 17th & 18th Floors
New York, New York 10120
Counsel for Defendants Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

Dated: Uniondale, New York
October 23, 2023

Chris D. Krimitsos
CHRIS D. KRIMITSOS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

v.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

Defendants.

Continental PLLC,

Attorney for Defendants.

Index No: 452564/2022

Engoron, J.S.C.

NOTICE OF APPEAL

Motion Seq. No. 028

PLEASE TAKE NOTICE THAT, pursuant to CPLR §§ 5511 and 5515, Continental PLLC hereby appeals to the Appellate Division, First Department, from the Decision and Order on Motion by Hon. Arthur F. Engoron, J.S.C., dated September 26, 2023 (NYSCEF Doc. No. 1533), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on September 27, 2023, and served by Notice of Entry on September 27, 2023, which granted Plaintiff's motion for sanctions.

This appeal is taken from each and every part of the Order insofar as Continental PLLC is aggrieved. A copy of the Informational Statement pursuant to 22 NYCRR 1250.3(a) is attached hereto as Exhibit A.

Dated: New York, New York
October 23, 2023

Respectfully submitted,

CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
526 RXR Plaza
Uniondale, New York 11556
Phone: (516) 832-7000
Facsimile: (516) 832-7080
E-mail: crobert@robertlaw.com
mfarina@robertlaw.com
Attorneys for Non-Party
Continental PLLC

-and-

MICHAEL S. ROSS
LAW OFFICES OF MICHAEL S. ROSS
60 East 42nd Street
New York, New York 10165
Phone: (212) 505-4060
Facsimile: (212) 505-4054
E-mail: michaelross@rosslaw.org
Attorneys for Non-Party
Continental PLLC

EXHIBIT "A"

Supreme Court of the State of New York
Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

- against -

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC.,THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type

- ☒ Civil Action
- ☐ CPLR article 75 Arbitration
- ☐ Action Commenced under CPLR 214-g
- ☐ CPLR article 78 Proceeding
- ☐ Special Proceeding Other
- ☐ Habeas Corpus Proceeding

Filing Type

- ☒ Appeal
- ☐ Original Proceedings
  - ☐ CPLR Article 78
  - ☐ Eminent Domain
  - ☐ Labor Law 220 or 220-b
  - ☐ Public Officers Law § 36
  - ☐ Real Property Tax Law § 1278
- ☐ Transferred Proceeding
  - ☐ CPLR Article 78
  - ☐ Executive Law § 298
- ☐ CPLR 5704 Review

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

☐ Administrative Review	☒ Business Relationships	☒ Commercial	☐ Contracts
☐ Declaratory Judgment	☐ Domestic Relations	☐ Election Law	☐ Estate Matters
☐ Family Court	☐ Mortgage Foreclosure	☐ Miscellaneous	☐ Prisoner Discipline & Parole
☐ Real Property (other than foreclosure)	☒ Statutory	☐ Taxation	☐ Torts

Appeal

Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

☐ Amended Decree	☐ Determination	■ Order	☐ Resettled Order
☐ Amended Judgement	☐ Finding	☐ Order & Judgment	☐ Ruling
☐ Amended Order	☐ Interlocutory Decree	☐ Partial Decree	☐ Other (specify):
■ Decision	☐ Interlocutory Judgment	☐ Resettled Decree	
☐ Decree	☐ Judgment	☐ Resettled Judgment	

Court: Supreme Court	County: New York
Dated: 09/26/2023	Entered: 09/27/2023
Judge (name in full): Hon. Arthur F. Engoron	Index No.: 452564/2022
Stage: ■ Interlocutory ☐ Final ☐ Post-Final	Trial: ☐ Yes ■ No If Yes: ☐ Jury ☐ Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? ■ Yes ☐ No

If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

2023-04925

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: ☐ Order to Show Cause ☐ Notice of Petition ☐ Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court	County: Choose County
Judge (name in full):	Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Continental PLLC, appeals from the Decision and Order of Supreme Court, New York County (Hon. Arthur F. Engoron, J.S.C.), dated September 26, 2023 and entered by the Clerk of the Court on September 27, 2023, which granted Plaintiff's motions for sanctions.

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Whether Supreme Court committed errors of law and/or fact, abused its discretion, and/or acted in excess of its jurisdiction by, inter alia, granting Plaintiff's motion for sanctions against Continental PLLC in the amount of $7,500.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	PEOPLE OF THE STATE OF NEW YORK	Plaintiff	Respondent
2	DONALD J. TRUMP	Defendant	None
3	DONALD TRUMP, JR.	Defendant	None
4	ERIC TRUMP	Defendant	None
5	ALLEN WEISSELBERG	Defendant	None
6	JEFFREY MCCONNEY	Defendant	None
7	THE DONALD J. TRUMP REVOCABLE TRUST	Defendant	None
8	THE TRUMP ORGANIZATION, INC.	Defendant	None
9	THE TRUMP ORGANIZATION LLC	Defendant	None
10	DJT HOLDINGS LLC	Defendant	None
11	DJT HOLDINGS MANAGING MEMBER	Defendant	None
12	TRUMP ENDEAVOR 12 LLC	Defendant	None
13	401 NORTH WABASH VENTURE LLC	Defendant	None
14	TRUMP OLD POST OFFICE LLC	Defendant	None
15	40 WALL STREET LLC	Defendant	None
16	SEVEN SPRINGS LLC	Defendant	None
17	Continental PLLC	Petitioner	Appellant
18			
19			
20			

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Kevin C. Wallace, Esq. and Colleen K. Faherty, Esq., Office of the New York State Attorney General			
Address: 28 Liberty Street			
City: New York	State: New York	Zip: 10005	Telephone No: 212-416-6046
E-mail Address: kevin.wallace@ag.ny.gov; colleen.faherty@ag.ny.gov			
Attorney Type: ☐ Retained ☐ Assigned ■ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 1			
Attorney/Firm Name: Alina Habba, Esq. and Michael Madaio, Esq., Habba Madaio & Associates, LLP			
Address: 112 West 34th Street, 17th &18th Floors			
City: New York	State: New York	Zip: 10020	Telephone No: 908-869-1188
E-mail Address: ahabba@habbalw.com; mmadaio@habbalaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 2, 5-16			
Attorney/Firm Name: Christopher M. Kise, Esq., Continental PLLC			
Address: 101 North Monroe Street, Suite 750			
City: Tallahassee	State: Florida	Zip: 32301	Telephone No: 305-677-2707
E-mail Address: ckise@continentalpllc.com			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ■ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):7, 10-16			
Attorney/Firm Name: Clifford S. Robert, Esq. and Michael Farina, Esq., Robert & Robert PLLC			
Address: 526 RXR Plaza			
City: Uniondale	State: New York	Zip: 11556	Telephone No: 516-832-7000
E-mail Address: crobert@robertlaw.com; mfarina@robertlaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):3-4			
Attorney/Firm Name: Michael S. Ross, Esq., Law Offices of Michael S. Ross			
Address: 640 East 42nd Street, 47th Floor			
City: New York	State: NY	Zip: 10165	Telephone No: 212-505-4060
E-mail Address: michaelross@rosslaw.org			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ■ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 17			
Attorney/Firm Name:			
Address:			
City: New York	State: NY	Zip: 10165	Telephone No:
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

-against-

DONALD J. TRUMP, *et al.*,

Defendants.

Index No. 452564/2022

NOTICE OF ENTRY

PLEASE TAKE NOTICE that annexed hereto is a true and correct copy of the Decision and Order of the Honorable Arthur F. Engoron, J.S.C. dated September 26, 2023, on Motion Sequence Numbers 027, 028, and 029 (NYSCEF Nos. 1531, 1532, 1533), filed and entered in the Office of the Clerk of the Supreme Court, New York County on the 27th day of September, 2023.

Dated: New York, New York
September 27, 2023

LETITIA JAMES
Attorney General of the State of New York

By: */s/ Colleen K Faherty*
Colleen K. Faherty
Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6046
colleen.faherty@ag.ny.gov

Attorney for the People of the State of New York

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON **PART** 37

Justice

----------X

INDEX NO. 452564/2022

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

MOTION DATES 08/30/2023, 08/30/2023, 09/05/2023

Plaintiff,

MOTION SEQ. NO. 026, 027, 028

- v -

DONALD J. TRUMP, DONALD TRUMP JR, ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

DECISION + ORDER ON MOTIONS

Defendants.

----------X

The following e-filed documents, listed by NYSCEF document number (Motion 026) 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1292, 1293, 1294, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415,

1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1442, 1443, 1444, 1445, 1446, 1447

were read on this motion for PARTIAL SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 027) 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1474

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 028) 1263, 1264, 1265, 1276, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473

were read on this motion for SANCTIONS.

Upon the foregoing documents, it is hereby ordered that defendants' motion for summary judgment is denied, plaintiff's motion for partial summary judgment is granted in part, and plaintiff's motion for sanctions is granted in part, all as detailed herein.

This action arises out of a years-long investigation that plaintiff, the Office of the Attorney General of the State of New York ("OAG"), conducted into certain business practices that defendants engaged in from 2011 through 2021. OAG alleges that the individual and entity defendants committed repeated and persistent fraud by preparing, certifying, and submitting to lenders and insurers false and misleading financial statements, thus violating New York Executive Law § 63(12).

Procedural Background

In 2020, OAG commenced a special proceeding seeking to enforce a series of subpoenas against various named defendants and other persons and entities. This Court presided over that proceeding and issued several orders compelling compliance with OAG's subpoenas. See People v The Trump Org., Sup Ct, NY County, Index No. 541685/2020. During that proceeding, OAG and the Trump Organization entered into an agreement, which, broadly speaking, tolled the statute of limitations from November 5, 2020, through May 31, 2022. NYSCEF Doc. No. 1260.

On November 3, 2022, this Court found preliminarily that defendants had a propensity to engage in persistent fraud by submitting false and misleading Statements of Financial Condition ("SFCs") on behalf of defendant Donald J. Trump ("Donald Trump"). NYSCEF Doc. No. 183. Accordingly, the Court granted a preliminary injunction against any further fraud and appointed the Hon. Barbara S. Jones (ret.) as an independent monitor to oversee defendants' financial statements and significant asset transfers. NYSCEF Doc. Nos. 193 and 194.

Defendants moved to dismiss the complaint. In a Decision and Order dated January 6, 2023, this Court denied the motion. NYSCEF Doc. Nos. 453. Defendants appealed, resulting in a January 6, 2023 Order wherein the Appellate Division, First Department modified this Court's order to the extent of: (1) declaring that the "continuing wrong doctrine does not delay or extend [the statute of limitations]"; (2) finding that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and timely against defendants not subject to the tolling agreement if they accrued after February 6, 2016; and (3) dismissing the complaint as against defendant Ivanka Trump on statute of limitations grounds, finding that she was not an employee of the Trump Organization at the time at which the parties entered into the tolling agreement. People v Trump, 217 AD3d 609 (1st Dept 2023).

The Appellate Division declined to dismiss *any* other defendants or *any* causes of action.

Discovery ended on July 28, 2023, and OAG filed a note of issue shortly thereafter. NYSCEF Doc. No. 644. OAG now moves for partial summary judgment on its first cause of action, for fraud under Executive Law § 63(12). NYSCEF Doc. No. 765. Separately, plaintiff now moves, pursuant to 22 NYCRR 130-1.1, to sanction defendants for frivolous motion practice. NYSCEF Doc. No. 1263. Defendants also move for summary judgment, seeking to dismiss the complaint in its entirety. NYSCEF Doc. No. 834.

Executive Law § 63(12)

Executive Law § 63(12) provides, as here pertinent, as follows:

> Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of section four hundred forty of the former penal law or section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper. The word "fraud" or "fraudulent" as used herein shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions. The term "persistent fraud" or "illegality" as used herein shall include continuance or carrying on of any fraudulent or illegal act or conduct. The term "repeated" as used herein shall include repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON ALL CAUSES OF ACTION

Arguments Defendants Raise Again

Standing and Capacity to Sue

Defendants' arguments that OAG has neither capacity nor standing to sue under Executive Law § 63(12), and that the disclaimers of non-party accountants Mazars insulate defendants, invoke the time-loop in the film "Groundhog Day." This Court emphatically rejected these arguments in its preliminary injunction decision and in its dismissal decision, and the First Department affirmed both. Defendants' contention that a different procedural posture mandates a reconsideration, or *a fortiori*, a reversal, is pure sophistry[1].

As this Court and others have made abundantly clear, "[i]t is not disputed that the Attorney General is empowered to sue for violations of [Executive Law § 63(12)]." People v Greenberg, 21 NY3d 439, 446 (2013) (finding Executive Law § 63(12) to be broadly worded anti-fraud device); People v Ford Motor Co., 74 NY2d 495, 502 (1989) ("Executive Law § 63(12) is the procedural route by which the Attorney-General may apply to Supreme Court for an order enjoining repeated illegal or fraudulent acts").

Parens Patriae and Consumer Ambit

Defendants repeat the erroneous argument that the complaint must be dismissed because OAG cannot demonstrate the requirements of a *parens patriae* action, which is one in the public interest. "*Parens patriae* is a common-law standing doctrine that permits the state to commence an action to protect a public interest, like the safety, health or welfare of its citizens." People v Grasso, 11 NY3d 64, 72 at n 4 (2008). Invocation of such doctrine, or its requirements, is not necessary where, as here, the New York legislature has specifically empowered the Attorney General to bring such an action pursuant to Executive Law § 63(12). People v Credit Suisse Sec. (USA) LLC, 31 NY3d 622, 633 (2018) ("it is undisputed that Executive Law § 63(12) gives the Attorney General standing to redress liabilities recognized elsewhere in the law, expanding the scope of available remedies"); People v Trump Entrepreneur Initiative LLC, 137 AD3d 409, 417 (1st Dept 2016) ("[E]ven apart from prevailing authority, the language of the statute itself appears to authorize a cause of action; like similar statutes that authorize causes of action, § 63(12) defines the fraudulent conduct that it prohibits, authorizes the Attorney General to commence an action or proceeding to foreclose that conduct, and specifies the relief, including equitable relief, that the Attorney General may seek").

In any event, even if compliance with the requirements of the *parens patriae* doctrine is necessary, which it is not, OAG has easily satisfied those requirements, as it is well-settled that "[i]n varying contexts, courts have held that a state has a quasi-sovereign interest in protecting the integrity of the marketplace." Grasso at 69 n 4; People v Coventry First LLC, 52 AD3d 345, 346 (1st Dept 2008) ("the claim pursuant to Executive Law § 63(12) constituted proper exercises

[1] Indeed, the Court made this crystal clear in its January 6, 2023 order when it found: "Here, the issues of capacity and standing, are pure issues of law and do not depend on a trial of disputed issues of fact. Simply put, who the instant parties are and what the law says, which determine capacity and standing, are not disputed issues of fact that need to be tried." NYSCEF Doc. No. 453 at 4.

of the State's regulation of businesses within its borders in the interest of securing an honest marketplace"); People v Amazon.com, Inc., 550 F Supp 3d 122, 130-131 (SD NY 2021) ("[T]he State's statutory interest under § 63(12) encompasses the prevention of either 'fraudulent or illegal' business activities. Misconduct that is illegal for reasons other than fraud still implicates the government's interests in guaranteeing a marketplace that adheres to standards of fairness...").

Defendants' rehashed argument that OAG's complaint must be dismissed because it is not designed to protect consumers is unavailing. New York v Feldman, 210 F Supp 2d 294, 299-300 (SD NY 2002) ("[D]efendants' claim that section 63(12) is limited to consumer protection actions is simply incorrect. The New York Attorney General has repeatedly used section 63(12) to secure relief for persons who are not consumers in cases that are not consumer protection actions").

Defendants cite to the trial court decision People v Domino's Pizza, Inc., NY Slip Op 30015(U) (Sup Ct, NY County 2021), which is not binding on this Court, as authority for the proposition that any relief sought here should come in the form of private contract litigation, not "a law enforcement action under a statute designed to address public harm." NYSCEF Doc. No. 835 at 39. However, Domino's is wholly distinguishable from the instant case. There, the Court found that "OAG did not establish that Domino's representations to franchisees... were false, deceptive, or misleading. Accordingly, the Court concludes that OAG has not established that Domino's engaged in conduct that 'tends to deceive or creates an atmosphere conducive to fraud.'" Domino's at 26[2]. Here, as discussed *infra*, OAG demonstrates that defendants repeatedly submitted fraudulent financial documents to obtain financial benefits which otherwise they would not have received.

Defendants glaringly misrepresent the requirements of an Executive Law § 63(12) cause of action. Citing to People v Northern Leasing Sys., Inc., 70 Misc 3d 256, 267 (Sup Ct, NY County 2021), defendants assert that OAG must show "the practice is one likely to mislead a reasonable consumer acting reasonably under the circumstances." NYSCEF Doc. No. 835 at 42. However, the word "consumer" does not appear anywhere in the referenced decision, and defendants' characterization of its holding is inaccurate[3]. Northern Leasing confirms that the "test for fraud under Executive Law § 63(12) is whether an act tends to deceive or creates an environment conducive to fraud." Northern Leasing at 267 (further holding "Executive Law § 63(12) expands fraud to encompass new liability, while including non-statutory fraud claims" and finding that "[a] claim under Executive Law § 63(12) is the exercise of 'the State's regulation of businesses within its borders in the interest of securing an honest marketplace'").

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[2] As the failure to demonstrate false misrepresentations foreclosed the possibility of liability on that issue in Domino's, any commentary about the statute's requirements was pure *dicta*.

[3] Although "consumer" does appear in the First Department's affirmance of Northern Leasing, it does not advance defendants' proposition that Executive Law § 63(12) actions be consumer oriented; it simply reaffirms that "the test for fraud is whether the targeted act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." 193 AD3d 67 (1st Dept 2021). The fact that Northern Leasing challenged actions targeted at consumers does not mean that Executive Law § 63(12) is restricted to such actions.

Non-Party Disclaimers

Defendants, yet again, argue that OAG's complaint must be dismissed because the SFCs contain language, provided by non-party accountants Mazars, that indicate that they have not audited or reviewed the accompanying financial statements and therefore cannot express an opinion as to whether the financial statements comply with Generally Accepted Accounting Principles ("GAAP"). However, as this Court already ruled, these non-party disclaimers do not insulate defendants from liability, as they plainly state that "Donald J. Trump is responsible for the preparation and fair presentation of the financial statement in accordance with accounting principles generally accepted in the United States of America and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the financial statement." NYSCEF Doc. No. 183.

As this Court explained in its November 3, 2022 Decision and Order: "[t]he law is abundantly clear that" using a disclaimer as a defense to a justifiable reliance claim requires proof that: "(1) the disclaimer is made sufficiently specific to the particular type of fact misrepresented or undisclosed; and (2) the alleged misrepresentations or omissions did not concern facts peculiarly within the [defendant's] knowledge." Basis Yield Alpha Fund (Master) v Goldman Sachs Grp., Inc., 115 AD3d 128, 137 (1st Dept 2014) ("a [plaintiff] may not be precluded from claiming reliance on misrepresentation of facts peculiarly within the [defendant's] knowledge"); People v Bull Inv. Grp., Inc., 46 AD2d 25, 29 (3d Dept 1974) ("It has been stated that '[t]he rule is clear that where one party to a transaction has superior knowledge, or means of knowledge not open to both parties alike, he is under a legal obligation to speak and his silence constitutes fraud"). As the SFCs did not particularize the type of fact misrepresented or undisclosed and were unquestionably based on information peculiarly within defendants' knowledge, defendants may not rely on such purported disclaimers as a defense.

In sum, the Mazars disclaimers put the onus for accuracy squarely on defendants' shoulders.

Scienter and "Participation" Requirements

Defendants erroneously claim that Fletcher v Dakota, Inc, 99 AD3d 43, 49 (1st Dept 2012), stands for the proposition that the purported "participation element [of a cause of action under Executive Law § 63(12)] is satisfied where the defendant 'directed, controlled, or ratified the decision that led to plaintiff's injury.'" However, Fletcher is not an Executive Law § 63(12) action, it was brought as a corporate tort; accordingly, is not relevant here.[4] Executive Law § 63(12) is much more than a mere codification of common law fraud.

Defendants also incorrectly rely on Abrahami v UPC Const. Co., 224 AD2d 231, 233 (1st Dept 1996), for the proposition that "[m]erely providing copies of purportedly false financial statements is insufficient." NYSCEF Doc. No. 835 at 55. However, as Abrahami was not brought pursuant to Executive Law § 63(12), its analysis regarding "intent to deceive" is irrelevant. Unlike the situation in Abrahami, where an action is brought pursuant to Executive

[4] In fact, had defendants not cut off the beginning of the sentence they cited, it would be evident on its face that such case is legally irrelevant, as the full sentence reads: "A leading treatise on corporations states that a director may be held individually liable to third parties for a corporate tort if he either participated in the tort or else 'directed, controlled, approved or ratified the decision that led to the plaintiff's injury.'" Fletcher at 49.

Law § 63(12), "good faith or lack of fraudulent intent is not in issue." People v Interstate Tractor Trailer Training, Inc., 66 Misc 2d 678, 682 (Sup Ct, NY County 1971) (holding liability under Executive Law § 63(12) does not require demonstrating an "intent to defraud"); Trump Entrepreneur Initiative at 417 ("fraud under section 63(12) may be established without proof of scienter or reliance"); Bull Inv. Grp. at 27 ("[i]t is well-settled that the definition of fraud under subdivision 12 of section 63 of the Executive Law is extremely broad and proof of scienter is not necessary").

Disgorgement of Profits

In flagrant disregard of prior orders of this Court *and* the First Department, defendants repeat the untenable notion that "disgorgement is unavailable as a matter of law" in Executive Law § 63(12) actions. NYSCEF Doc. No. 835 at 70. This is patently false, as defendants are, or certainly should be, aware that the Appellate Division, First Department made it clear *in this very case* that "[w]e have already held that the failure to allege losses does not require dismissal of a claim for disgorgement under Executive Law § 63(12)." Trump, 217 AD3d at 610.

Defendants nonetheless rely on the trial court decision in People v Direct Revenue, LLC, 19 Misc 3d 1124(A) (Sup Ct, NY County 2008), for the proposition that Executive Law § 63(12) "do[es] no[t] authorize the general disgorgement of profits received from sources other than the public." NYSCEF Doc. No. 835 at 71-72. However, defendants' neglect to mention that Direct Revenue was superseded, and essentially overruled, in 2016 by the New York Court of Appeals in People v Greenberg, which unequivocally held that "disgorgement is an available remedy under the Martin Act and the Executive Law." People v Greenberg, 27 NY3d 490, 497 (2016).

Also fatally flawed is defendants' reliance on People v Frink Am., Inc., 2 AD3d 1379, 1380 (4th Dept 2003), as it relies on the outdated proposition that Executive Law § 63(12) "does not create any new causes of action" and thus, the remedy of disgorgement is unavailable. NYSCEF Doc. No. 835 at 73-74. However, in Trump Entrepreneur Initiative, in which at least three of the instant defendants were parties, the First Department unambiguously declared that "the Attorney General is, in fact, authorized to bring a cause of action for fraud under Executive Law § 63(12)." Trump Entrepreneur Initiative at 418; see also People v Pharmacia Corp., 27 Misc 3d 368, 373 (Sup Ct, NY County 2010) (holding "Executive Law § 63(12) applies to fraudulent conduct actionable at common law, as well as to conduct for which liability arises solely from the statute").

Defendants incorrectly posit that, under People v Ernst & Young, LLP, 114 AD3d 569 (1st Dept 2014), disgorgement is available under the Martin Act but not under Executive Law § 63(12). NYSCEF Doc. No. 836 at 73. This is simply untrue. In Ernst & Young, the First Department specifically held that disgorgement was an available and potentially "crucial" remedy in an Executive Law § 63(12) action. Ernst & Young at 570.

Defendants correctly assert that "the record is devoid of any evidence of default, breach, late payment, or any complaint of harm" and argue that as none of the recipients of the subject SFCs ever lodged a complaint with OAG or otherwise claimed damages, disgorgement of profits would be inappropriate. NYSCEF Doc. No. 835 at 40.

However, that is completely irrelevant. As the Ernst & Young Court noted:

> [W]here, as here, there is a claim based on fraudulent activity, disgorgement may be available as an equitable remedy, notwithstanding the absence of loss to individuals or independent claims for restitution. Disgorgement is distinct from the remedy of restitution because it focuses on the gain to the wrongdoer as opposed to the loss to the victim. Thus, disgorgement aims to deter wrongdoing by preventing the wrongdoer from retaining ill-gotten gains from fraudulent conduct. Accordingly, the remedy of disgorgement does not require a showing or allegation of direct losses to consumers or the public; the source of the ill-gotten gains is "immaterial."

Id. (disgorgement is not impermissible penalty "since the wrongdoer who is deprived of an illicit gain is ideally left in the position he would have been had there been no misconduct") (internal citations omitted); see also Amazon.com at 130 ("Executive Law § 63(12) authorizes the Attorney General to seek injunctive and other relief", and finding "the Attorney General can seek disgorgement of profits on the State's behalf").

Sanctionable Conduct for Frivolous Motion Practice

In response to both OAG's request for a preliminary injunction and to defendants' motions to dismiss, this Court rejected every one of the aforementioned arguments. In rejecting such arguments for the second time, this Court cautioned that "sophisticated counsel should have known better." [5] NYSCEF Doc. No. 453 at 5. However, the Court declined to impose sanctions, believing it had "made its point." Id.

Apparently, the point was not received.

One would not know from reading defendants' papers that this Court has already *twice* ruled against these arguments, called them frivolous, and *twice* been affirmed by the First Department.

"In its discretion, a court may award costs and financial sanctions against an attorney or party resulting from frivolous conduct." Kamen v Diaz-Kamen, 40 AD3d 937, 937 (2d Dept 2007). See Yan v Klein, 35 AD3d 729, 729–30 (2d Dept 2006) ("The plaintiff, following two prior actions, has 'continued to press the same patently meritless claims,' most of which are now barred by the doctrines of res judicata and collateral estoppel").

Defendants' conduct in reiterating these frivolous arguments is egregious. We are way beyond the point of "sophisticated counsel should have known better"; we are at the point of intentional and blatant disregard of controlling authority and law of the case. This Court emphatically rejected these arguments, as did the First Department. Defendants' repetition of them here is indefensible.

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5 The Court even went so far as to caution that the "arguments were borderline frivolous even the first time defendants made them." NYSCEF Doc. No. 453 at 3.

Pursuant to New York Administrative Code § 130-1.1, "[t]he Court, as appropriate, may make such an award of costs or impose such financial sanctions against either an attorney or a party to the litigation or against both." The provision further states that:

> For purposes of this Part, conduct is frivolous if:
>
> (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
>
> (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
>
> (3) it asserts material factual statements that are false.

22 NYCRR 130-1.1(c). Defendants' inscrutable persistence in re-presenting these arguments clearly satisfies the first of these three possible criteria.

When considering imposing sanctions "[a]mong the factors [the court] is directed to consider is whether the conduct was continued when it became apparent, or should have become apparent, that the conduct was frivolous, or when such was brought to the attention of the parties or to counsel." Levy v Carol Mgmt. Corp., 260 AD2d 27, 34 (1st Dept 1999) (further finding that sanctions both "punish past conduct" and "they are goal oriented, in that they are useful in deterring future frivolous conduct").

In its January 6, 2023 Decision and Order, this Court warned defendants that their "reiteration of [these previously rejected arguments] scattered across five different motions to dismis[s] was frivolous." NYSCEF Doc. No. 453 at 3.

In a last-ditch attempt to stave off sanctions, defendants have submitted an affirmation by the Hon. Leonard B. Austin (ret.), who had a supremely distinguished judicial career, culminating in 12 years on the Appellate Division, Second Department. NYSCEF Doc. No. 1449. Justice Austin presents what is essentially a primer on the interplay between motions to dismiss and motions for summary judgment, and every point of law is valid.

However, it is wholly invalid as a reason for this Court to deny sanctions. First, legal arguments are for counsel to make, not for experts to submit. "The rule prohibiting experts from providing their legal opinions or conclusions is 'so well-established that it is often deemed a basic premise or assumption of evidence law—a kind of axiomatic principle.'" In re Initial Pub. Offering Sec. Litig., 174 F Supp 2d 61, 64 (SD NY 2001) (citing Thomas Baker, The Impropriety of Expert Witness Testimony on the Law, 40 U Kan LRev 325, 352 (1992) (precluding "expert affidavits" on the law); accord, Note, Expert Legal Testimony, 97 Harv LRev 797, 797 (1984) ("it remains black-letter law that expert legal testimony is not permissible"). Neither defendants nor Justice Austin has sought permission to file an amicus brief. In their own submissions, defendants have expounded on the law of capacity, standing, disclaimers, motions to dismiss, motions for summary judgment, and sanctions. The heft and prestige of a legal lion adds nothing.

More importantly, the subject affirmation utterly fails to fit the specific facts of this case into the general principles it enunciates. In many situations, discovery, and a complete record, and the reversal of the burden of proof, will turn the tide, requiring that a valid complaint be dismissed because there is no evidence to support it. But standing and capacity are legal questions, not factual issues. Crucially, while defendants have, by their own account, conducted extensive discovery and have created a complete record, they fail to point to a single fact that discovery has uncovered, let alone a single fact in the record, that changes the calculus of their denied and doomed capacity and standing arguments.

Capacity and standing are not esoteric concepts. Infants, legally declared incompetents, and persons under certain legal disabilities are not allowed to sue. The New York Attorney General is none of the above. If my sibling or neighbor is harmed, I do not have standing to sue for his or her injury. Citizens may not sue to prevent governmental actions unless they may suffer some personal harm. Executive Law § 63(12) was promulgated to give the Attorney General standing to sue on behalf of the people of New York to prevent or deter the precise type of fraud here at issue. Arguments to the contrary are risible.

Defendants' arguments that the factual record developed in discovery changed the landscape under which standing should be viewed is legally preposterous. The best that defendants could muster at oral argument was to contend (incorrectly) that plaintiff cannot sue because the subject transactions were between private entities, and nobody lost money. However, that is purely an argument on the merits, not an argument on standing. Taken to its logical extreme, absolutely any time a defendant denies liability, it could move to dismiss on the ground of lack of standing.

Exacerbating defendants' obstreperous conduct is their continued reliance on bogus arguments, in papers and oral argument. In defendants' world: rent regulated apartments are worth the same as unregulated apartments; restricted land is worth the same as unrestricted land; restrictions can evaporate into thin air; a disclaimer by one party casting responsibility on another party exonerates the other party's lies; the Attorney General of the State of New York does not have capacity to sue or standing to sue (never mind all those cases where the Attorney General has sued successfully) under a statute expressly designed to provide that right; all illegal acts are untimely if they stem from one untimely act; and square footage subjective.

That is a fantasy world, not the real world.

There is also a larger context to the sanctions issue. Several defendants are no strangers to sanctions and why courts are sometimes constrained to issue them. In the investigatory special proceeding this Court found Donald Trump in contempt of Court and sanctioned him $10,000 per day for failing to comply with his discovery obligations. This Court lifted the contempt after 11 days. The First Department affirmed the contempt and the fines. People v Trump, 213 AD3d 503, 504 (1st Dept 2023) ("[T]he financial sanction to compel compliance was a proper exercise of the court's discretionary power and was not excessive or otherwise improper, under the particular circumstances").

In Donald J. Trump v Hillary R. Clinton, 22-14102-CV-DMM, ("Order on Motion for Indicative Ruling") (filed September 15, 2023) (SD FL), Judge Donald M. Middlebrooks denied what in

New York legal parlance would be called "a motion to reargue," pursuant to which Donald Trump asked Judge Middlebrooks to vacate sanctions imposed on him and his legal team totaling close to one million dollars. Judge Middlebrooks wrote, on the first page thereof, that "Movants acted in bad faith in bringing this lawsuit and that this case exemplifies Mr. Trump's history of abusing the judicial process.[6]" Id.

Unfortunately, sanctions are the only way to impress upon defendants' attorneys the consequences of engaging in repetitive, frivolous motion practice after this Court, affirmed by the Appellate Division, expressly warned them against doing so. Boye v Rubin & Bailin, LLP, 152 AD3d 1, 11 (1st Dept 2017) ("sanctions serve to deter future frivolous conduct" and their "goals include preventing the waste of judicial resources, and deterring vexatious litigation and dilatory or malicious litigation tactics").

It is of no consequence whether the arguments were made at the direction of the clients or *sua sponte* by the attorneys; counsel are "ethically obligated to withdraw any baseless and false claims, if not upon [their] own review of the record, certainly by the time [the] Supreme Court advised [them] of this fact." Boye at 11 (upholding sanctions against attorneys because "counsel continued to... pursue claims which were completely without merit in law or fact."); see also Nachbaur v Am. Transit Ins. Co., 300 AD2d 74, 75 (1st Dept 2002) (motion court properly sanctioned attorneys for "repetitive and meritless motions"); Leventritt v Eckstein, 206 AD2d 313, 314 (1st Dept 1994) (affirming sanctions imposed on attorney for "repeated pattern of frivolous conduct"); William Stockler & Co. v Heller, 189 AD2d 601, 603 (1st Dept 1993) (affirming sanctions against attorney upon finding "there was no factual or legal basis for defendant's original cross motion, or for the reargument motion, that both motions were 'totally frivolous' and were submitted 'just really to delay'"). Counsel should be the first line of defense against frivolous litigation.

Accordingly, this Court grants OAG's motion for sanctions, in part, to the extent of sanctioning each of defendants' attorneys who signed their names to the instant legal briefs[7], in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Order.

Arguments Defendants Raise for the First Time

Summary Judgment Standard

To prevail on its motion for summary judgment on all causes of action, defendants must first "make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient

[6] One factor Judge Middlebrooks considered was Donald Trump's "disregard for legal principles and precedent." Id. at 14. In short, Donald Trump, and his lawyers, are not sanctions neophytes. This is not their first rodeo.

[7] The following attorneys signed their names to defendants' instant briefs and are, accordingly, sanctioned $7,500 each: Michael Madaio, Esq. (Habba Madaio & Associates, LLP); Clifford S. Robert, Esq. (Robert & Robert PLLC); Michael Farina Esq. (Robert & Robert PLLC); Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC); and Armen Morian (Morian Law PLLC).

evidence to eliminate any material issues of fact from the case." Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 (1985). "Failure [of the movant] to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers." Id. If the defendants make out their prima facie showing, the burden then shifts to plaintiff to offer evidence sufficient to rebut that showing by identifying disputed issues of fact that should go before a trier of fact.

Defendants strenuously argue throughout their briefs that OAG has not met her burden sufficient to defeat defendants' motion for summary judgment. However, defendants misstate the black letter law applicable to summary judgment, citing to City Dental Servs., P.C. v New York Cent. Mut., 34 Misc 3d 127(A) (App Term 2d, 11th, 13th Jud Dists 2011) for the flatly wrong proposition that "in order to defeat summary judgment on these claims of predicate illegality, the NYAG must, with respect to each predicate illegality attached, 'establish[] each element of its cause with respect to those causes of action.'" NYSCEF Doc. No. 835 at 62.

Not only does City Dental not stand for that proposition (it merely found that under the circumstances of that case, plaintiff's evidence failed to meet her burden on summary judgment), but the law is well-settled that "to defeat a motion for summary judgment the opposing party must 'show facts sufficient to require a trial of any issue of fact," not make out its own case. Zuckerman v City of New York, 49 NY2d 557, 562 (1980). While OAG must establish each and every element of its cause(s) of action in order to *prevail* on its own motion for summary judgment, in order to defeat defendants' motion for summary judgment (provided defendants are able to demonstrate a prima facie case) "an opposing party must 'show facts sufficient to require a trial of any issue of fact.'" Guzman v Strab Const. Corp., 228 AD2d 645, 646 (2d Dept 1996) ("evidentiary facts derived from the documents submitted [in opposition to summary judgment motion] are sufficient to present a triable issue of fact").

The "Worthless Clause"

Defendants rely on what they call a "worthless clause" set forth in the SFCs under the section entitled "Basis of Presentation" that reads, as here pertinent, as follows:

> Assets are stated at their estimated current values and liabilities at their estimated current amounts using various valuation methods. Such valuation methods include, but are not limited to, the use of appraisals, capitalization of anticipated earnings, recent sales and offers, and estimates of current values as determined by Mr. Trump in conjunction with his associates and, in some instances, outside professionals. Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates presented herein are not necessarily indicative of the amount that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts.

NYSCEF Doc. Nos. 769 at 7; 770 at 7; 771 at 7; 772 at 7; 773 at 7.

In his sworn deposition, Donald Trump spent a lot of time invoking this clause: "Well, they call it a 'disclaimer.' They call it 'worthless clause' too, because it makes the statement 'worthless.'" NYSCEF Doc. No. 859 at 67. Donald Trump goes on to say that "I have a clause in there that says, don't believe the statement, go out and do your own work. This statement is 'worthless.' It means nothing." Id. at 68. Furthermore, Donald Trump implies that he did not consider it important to review the SFCs for accuracy because of the existence of this purported "worthless clause":

> OAG: Does this refresh your recollection of the process whereby you would get final review of the Statement of Financial Condition?
>
> DJT: Yeah, I think generally. It's interesting. I would say as years went by, I got less and less and then once I became President, I would – if I saw it at all, I'd see it, you know, after it was already done.
>
> OAG: So in the period –
>
> DJT: Again, you know, I hate to be boring and tell you this. When you have the worthless clause on a piece of paper and the first – literally the first page you're reading about how this is a worthless statement from the standpoint of your using it as a bank or whatever –whoever may be using it, you tend not to get overly excited about it. I think it had very little impact, if any impact on the banks.
>
> ....
>
> OAG: So am I understanding that you didn't particularly care about what was in the Statement of Financial Condition?
>
> DJT: I didn't get involved in it very much. I felt it was a meaningless document, other than it was almost a list of my properties, with good faith effort of people trying to put some value down. It was a good faith effort.

Id. at 107-108. Defendants further submit the affidavit and deposition transcript of Robert Unell, who purports to be an expert in commercial real estate, for the proposition that because of "the worthless clause" in the SFC, "no lender relies on these for what it is." NYSCEF Doc. Nos. 1030 at 183-184; 1031.

However, defendants' reliance on these "worthless" disclaimers is worthless. The clause does not use the words "worthless" or "useless" or "ignore" or "disregard" or any similar words. It does not say, "the values herein are what I think the properties will be worth in ten or more years." Indeed, the quoted language uses the word "current" no less than five times, and the word "future" zero times.

Additionally, as discussed *supra*, a defendant may not rely on a disclaimer for misrepresentation of facts peculiarly within the defendant's knowledge. Basis Yield Alpha Fund at 136. Here, as the valuations of the subject properties are, obviously, peculiarly within defendants' knowledge, their reliance on them is to no avail.

Furthermore, "[t]his 'special facts doctrine' applies *regardless of the level of sophistication of the parties*." TIAA Glob. Invs. LLC v One Astoria Square LLC, 127 AD3d 75, 87 (1st Dept 2015) (emphasis added) (holding disclaimer does not bar liability for fraud where facts were peculiarly within disclaiming party's knowledge).

Thus, the "worthless clause" does not say what defendants say it says, does not rise to the level of an enforceable disclaimer, and cannot be used to insulate fraud as to facts peculiarly within defendants' knowledge, even vis-à-vis sophisticated recipients.

The Tolling Agreement

The First Department has declared that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and claims against defendants not subject to the tolling agreement are timely if they accrued after February 6, 2016. Trump, 217 AD3d at 611. Defendants concede that the tolling agreement binds each of the LLC-defendants and the Trump Organization. However, they argue that each of the individual defendants and the Donald J. Trump Revocable Trust (the "DJT Revocable Trust") are not bound by the agreement.

Alan Garten, the Trump Organization's Chief Legal Officer, originally entered into the tolling agreement on behalf of "the Trump Organization" on August 27, 2021; the agreement was extended one time by an amendment dated May 3, 2022. NYSCEF Doc. No. 1260. It tolls the statute of limitations for the period from November 5, 2020, through May 31, 2022. Id. at 2. The agreement contains a footnote to the entity "the Trump Organization" that reads as follows:

> As noted in the December 7, 2019 subpoena issued in this investigation to the Trump Organization, the "Trump Organization" as used herein includes The Trump Organization, Inc; DJT Holdings LLC; DJT Holdings Managing Member LLC; and any predecessors, successors, present or former parents, subsidiaries, and affiliates, whether direct or indirect; and all directors, officers, partners, employees, agents, contractors, consultants, representatives, and attorneys of the foregoing, and any other Persons associated with or acting on behalf of the foregoing, or acting on behalf of any predecessors, successors, or affiliates of the foregoing.

Id. at 4 n 1.

Thus, the tolling agreement at issue here binds "all directors [and] officers" and "present or former parents" of the Trump Organization and its affiliates and subsidiaries. Id. It is undisputed that at the time the tolling agreement was executed, each individual defendant, Donald J. Trump, Donald Trump Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney,

were all directors and/or officers of the Trump Organization. NYSCEF Doc. No. 1293 at ¶¶ 673, 680, 696, 710, 736.

Defendants argue that the non-signatory defendants are not bound by the agreement, citing Highland Crusader Offshore Partners, L.P. v Targeted Delivery Techs. Holdings, Ltd., 184 AD3d 116, 121 (1st Dept 2020), for the "general principal that only the parties to a contract are bound by its terms." NYSCEF Doc. No. 835 at 27. However, defendants fail to quote the following sentence, which provides that "[a] non-signatory may be bound by a contract under certain limited circumstances." Highland at 122. See also Oberon Sec., LLC v Titanic Ent. Holdings LLC, 198 AD3d 602, 603 (1st Dept 2021) (non-signatory companies bound by agreement with language defining signatory to include "all subsidiaries, affiliates, [and] successors").

In People v JUUL Labs, Inc., 212 AD3d 414, 417 (1st Dept 2023), in a case involving nearly identical language in a corporate tolling agreement[8], the First Department recently held that non-signatory corporate affiliates, officers, and directors were bound by the agreement. Similarly, here all the individual defendants are bound by the instant tolling agreement's terms and may be held liable for any claims that accrued after July 13, 2014.

Defendants argue that OAG is judicially estopped from asserting that the agreement binds the individual defendants based on statements OAG's counsel made during oral argument in the investigatory special proceeding. NYSCEF Doc. No. 1292 at 26. Specifically, on April 25, 2022, while seeking to hold Donald Trump in contempt for failing to comply with court orders, OAG's counsel stated: "[t]here is hard prejudice because Donald Trump is not a party to the tolling agreement, that tolling agreement only applies to the Trump Organization." NYSCEF Doc. No. 1041 at 59.

For judicial estoppel to be applicable: "First, the party against whom the estoppel is asserted must have argued an inconsistent position in a prior proceeding; and second, the prior inconsistent position must have been adopted by the court in some manner." Bates v Long Island R. Co., 997 F2d 1028, 1038 (2d Cir 1993).

Defendants are correct that the first prong is satisfied, in that the statements OAG's counsel made during oral argument are inconsistent with the position OAG is now taking. However, defendants cannot demonstrate that this Court adopted the prior position. Indeed, this Court did not need to, and did not, consider the tolling agreement when it issued its April 26, 2022 Decision and Order finding Donald Trump in contempt. See Ghatani v AGH Realty, LLC, 181 AD3d 909, 911 (2d Dept 2020) ("For the doctrine [of judicial estoppel] to apply, there must be a final determination endorsing the party's inconsistent position in the prior proceeding").

This Court has not addressed the tolling agreement until now. Accordingly, defendants cannot demonstrate that this Court adopted OAG's prior inconsistent position.

[8] The substantially similar tolling agreement at issue in Juul can be found under Index No. 452168/2019, NYSCEF Doc. No. 176.

Moreover, "[t]he party asserting estoppel must show with respect to himself: '(1) lack of knowledge of the true facts; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change in his position.'" BWA Corp. v Alltrans Exp. U.S.A., Inc., 112 AD2d 850, 853 (1st Dept 1985). Here, none of the defendants claim that they changed their positions or courses of conduct in reliance upon the statement of OAG's counsel during oral argument.

Finally, while judicial estoppel may be applied to prohibit inconsistent changes in factual positions, courts have declined to extend the doctrine to changes in legal positions. Seneca Nation of Indians v New York, 26 F Supp 2d 555, 565 (WD NY 1998), affd, 178 F3d 95 (2d Cir 1999) (finding "[t]here is no legal authority" for "broadening of the doctrine" to "include seemingly inconsistent legal positions"). Who physically signed the agreement is a question of fact; whom it binds is a question of law.

Defendants' argument that the DJT Revocable Trust is not bound by the tolling agreement falls flat. In his deposition, Donald Trump affirmed under oath that the assets of the Trump Organization are held in the DJT Revocable Trust, for which he is the sole donor and beneficiary. NYSCEF Doc. No. 859 at 21. Donald Trump also affirmed that at the time the trust was formed, he was the sole trustee and remained the sole trustee until 2017, when defendants Allen Weisselberg and Donald Trump, Jr. became the sole trustees. Id. at 20-24.

As every beneficiary, donor, and trustee of the DJT Revocable Trust is a defendant bound by the tolling agreement, and as the trust is unquestionably a "parent" of the Trump Organization, so too does the tolling agreement bind the DJT Revocable Trust. See People v Leasing Expenses Co. LLC, 199 AD3d 521, 522 (1st Dept 2021) ("It may likewise be inferred that the trustees had knowledge of the activities of the businesses they controlled through the trust mechanism. Hence, under Executive Law § 63(12), the family trusts and trustees may likewise be held liable for the fraud"); see e.g., Kurzman v Graham, 12 Misc 3d 586, 590 (Sup Ct, NY County 2006) ("courts will not allow the owner of assets to evade creditors by placing the property in a trust while retaining a right to revoke the trust").

Defendants cite to New York Estates, Powers and Trust Law § 11-1.1(b)(17) for the proposition that only a trustee may bind a trust to an agreement. However, § 11-1.1(b)(17) does not state this; rather, it states:

> (b) In the absence of contrary or limiting provisions in the court order or decree appointing a fiduciary, or in a subsequent order or decree, or in the will, deed or other instrument, every fiduciary is authorized:
>
> ...
>
> (17) To execute and deliver agreements, assignments, bills of sale, contracts, deeds, notes, receipts and any other instrument necessary or appropriate for the administration of the estate or trust.

This provision simply says what a fiduciary is permitted to do in the absence of a contrary provision. It does nothing to advance defendants' argument that *only* a trustee may bind a trust,

particularly since defendants fail to cite to any provision of the DJT Revocable Trust restricting who can bind it, as § 11-1.1(b)(17) anticipates.

Moreover, Korn v Korn, 206 AD3d 529, 530 (1st Dept 2022), upon which defendants inexplicably rely, is irrelevant to the instant analysis, as that case involved an examination by the court as to whether a fiduciary had a right or duty to negotiate on behalf of an estate pursuant to § 11-1.1(b)(13), not pursuant to § 11-1.1(b)(17), to which defendants cite.

Finally, "the Attorney General should not be limited, in [her] duty to protect the public interest, by an... agreement [s]he did not join." People v Coventry First LLC, 13 NY3d 108, 114 (2009) (holding Attorney General not bound by arbitration agreement when pursuing Executive Law § 63(12) claim and finding "[s]uch an arrangement between private parties cannot alter the Attorney General's statutory role or the remedies that [s]he is empowered to seek").

The tolling agreement was a mutually beneficial and common arrangement pursuant to which OAG agreed to hold off suing, and Alan Garten, on behalf of the Trump Organization, agreed to toll the statute of limitations. All defendants received the benefit of the bargain; OAG held off suing. OAG is entitled to its benefit of the bargain, the tolling of the statute of limitations, for the limited agreed-upon time, as against anyone it could have sued for the matters at issue at the time at which the agreement was executed. OAG clearly did not intend to permit defendants' principals to evade the tolling agreement based on a technicality contrary to the spirit of the agreement and controlling caselaw.

Statute of Limitations

As a general rule, statutes of limitation start running when a claim accrues, that is, when it can be sued upon. In arguing that OAG's causes of action are untimely, defendants incorrectly assert that the statute of limitations starts running on the date the parties entered into the subject agreements, or when the loans closed. However, the First Department did not use the word "closed," it used the word "completed." Trump, 217 AD3d at 611. Obviously, the transactions were not "completed" while the defendants were still obligated to, and did, annually submit current SFCs to comply with the terms of the loan agreements.

Defendants further assert that any continuing documentation provided after the agreements were entered into, or when the loans closed, is of no consequence if the proceeds were distributed prior to July 2014. NYSCEF Doc. No. 835 at 18. This argument is unavailing. As OAG asserts, each submission of an SFC after July 13, 2014, constituted a separate fraudulent act. Indeed, each submission of a financial document to a third-party lender or insurer would "requir[e] a separate exercise of judgment and authority," triggering a new claim. Yin Shin Leung Charitable Found. v Seng, 177 AD3d 463, 464 (1st Dept 2019) (finding continuous series of wrongs each of which gave rise to its own claim).

Defendants mistakenly assert that if a loan agreement was entered into and its proceeds were dispersed prior to the applicable statute of limitations, then a claim arising out of submitting any subsequent contractually required financial documentation is also untimely, irrespective of when that documentation is submitted. Defendants would have this Court apply a bizarre, invented, inverted form of the "relation back" doctrine, pursuant to which if one aspect of fraudulent

business conduct falls outside the statute of limitations, then all subsequent aspects of fraudulent conduct also fall outside the statute, no matter how inextricably intertwined.

Of course, this is contrary to controlling case law, which holds that a cause of action accrues at the time "when one misrepresents a material fact." Graubard Mollen Dannett & Horowitz v Moskovitz, 86 NY2d 112, 12 (1995). Moreover, even the plain language of Executive Law § 63(12) states: "[t]he term 'repeated' as used herein shall include repetition of any *separate and distinct fraudulent or illegal act*" (emphasis added). Clearly, the submission of each separate fraudulent SFC is a distinct fraudulent act.

OAG is not challenging the loans, the closings, or the disbursements; it is challenging defendants' submissions of financial documents containing false and misleading information. Thus, any SFC that was submitted after July 13, 2014, falls within the applicable statute of limitations. CW Capital Cobalt VR Ltd. v CW Capital Invs., LLC, 195 AD3d 12, 19-20 (1st Dept 2021) (each instance of wrongful conduct a "separate, actionable wrong" giving "rise to a new claim").

Materiality

It is settled that a standalone cause of action under Executive Law § 63(12) does not require a demonstration of materiality but merely that an "act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." People v Gen. Elec. Co., 302 AD2d 314, 314-315 (1st Dept 2003) (holding that, unlike GBL § 349, plaintiff need not prove "the challenged act or practice 'was misleading in a material way'").

Although the Domino's court found that "evidence regarding falsity, materiality, reliance and causation plainly is *relevant* to determining whether the Attorney General has established that the challenged conduct has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud" (Domino's at 11), every Appellate Division and the New York Court of Appeals now hold that materiality and scienter are not requirements for liability under § 63(12).

However, as discussed *infra*, although materiality is required under the second through seventh causes of action, it is not required under a standalone cause of action under Executive Law § 63(12), the OAG's first cause of action.

Defendants argue that the SFCs were not materially misleading, claiming, *inter alia* that: (1) "[t]here is no such thing as objective value"; (2) "a substantial difference between valuation in the SOFCs and appraisal, per se, is not evidence of inflated values"; (3) there is nothing improper about using "fixed assets" valuations as opposed to using the current market valuation approach; and (4) it was proper to include "internally developed intangibles, such as the brand premium used in the valuation of President Trump's golf clubs, in personal financial statements." NYSCEF Doc No. 1292 at 20-23.

Thus, defendants essentially argue that value is inherently subjective; that because internal brand valuations are in the eye of the beholder (here, Donald Trump), they cannot be overvalued. Defendants argue that "[n]o bank or underwriter would have reasonably been materially misled by the alleged misstatements or omissions in the SOFCs and other information the Defendants

made available to their counterparties because no sophisticated counterparty would have considered the SOFCs and other information provided by the Defendants alone as material to extend credit or set an interest rate, or issue an insurance policy or price a risk, without doing their own due diligence." NYSCEF Doc. No. 835 at 45.

Defendants also argue: "[i]t follows that if the user [of the SFCs] is in possession of the correct information, then the financial statements are not materially misstated." Id. at 39. Defendants' stance is, practically speaking, that they may submit false SFCs so long as the recipients know, from their own due diligence, that the information is false.

Accepting defendants' premise would require ignoring decades of controlling authority holding that financial statements and real property valuations are to be judged objectively, not subjectively. FMC Corp. v Unmack, 92 NY2d 179, 191 (1998) ("*objectively* reasonable conclusion, drawn by a competent and experience appraiser, was based on credible evidence" that demonstrated "property was overvalued") (emphasis added); Assured Guar. Mun. Corp. v DLJ Mortg. Cap. Inc., 44 Misc 3d 1206(A) (Sup Ct, NY County 2014) ("Credit Suisse is reading this as a subjective standard, dependent on Assured's expectations. Credit Suisse is wrong. It is well settled that this is an objective standard").

Moreover, courts have long found that "generally, it is the 'market value' which provides the most reliable valuation for assessment purposes." Great Atl. & Pac. Tea Co. v Kiernan, 42 NY2d 236, 239 (1977); Consol. Edison Co. of New York v City of New York, 33 AD3d 915, 916 (2d Dept 2007) ("the standard for assessment remains market value"), affd 8 NY3d 591. Beauty may be in the eye of the beholder, but value is in the eye of the marketplace.

Further, defendants' assertion that the discrepancies between their valuations and the OAG's are immaterial is nonsense. What OAG has established, in many cases by clear, indisputable documentary evidence (as discussed *infra*), is not a matter of rounding errors or reasonable experts disagreeing. OAG has submitted conclusive evidence that between 2014 and 2021, defendants overvalued the assets reported in the SFCs between 17.27-38.51%; this amounts to a discrepancy of between $812 million and $2.2 billion dollars. NYSCEF Doc. No. 766 at 70. Even in the world of high finance, this Court cannot endorse a proposition that finds a misstatement of at least $812 million dollars to be "immaterial." Defendants have failed to identify any authority for the notion that discrepancies of the magnitude demonstrated here could be considered immaterial.

The Second through Seventh Causes of Action

The Second, Third, Fourth, Fifth, Sixth, and Seventh causes of action allege violations of Executive Law § 63(12) based on underlying violations of the New York Penal Law prohibiting falsification of business records, issuance of false financial statements, and insurance fraud.

Liability under New York Penal Law § 175.05 (falsifying business records in the second degree) requires that a person "[m]akes or causes a false entry in the business records of an enterprise."

Liability under New York Penal Law § 175.45 (issuing a false financial statement) requires that a person "represents in writing that a written instrument purporting to describe a person's financial

condition or ability to pay as of a prior date is accurate with respect to such person's current financial condition or ability to pay, whereas [that person] knows it is materially inaccurate in that respect."

Liability under New York Penal Law § 176.05 (insurance fraud) requires that a person submitted an application for insurance either: (1) knowing that it "contain[ed] materially false information concerning any fact material thereto"; or (2) "conceal[ed], for the purpose of misleading, information concerning any fact material thereto."

Accordingly, unlike a standalone cause of action under Executive Law § 63(12). the second through seventh causes of action require demonstrating some component of intent and materiality. People v Alamo Rent A Car, Inc., 174 Misc 2d 501, 505 (Sup Ct, NY County 1997) ("As in all other situations requiring *mens rea*, however, petitioners may prove, by reference to facts and circumstances surrounding the case, that respondents knew that their conduct was unlawful. Moreover, petitioners need not prove respondents acted with an 'evil motive, bad purpose or corrupt design'") (internal citations omitted).

OAG has demonstrated that there remain, at the very least, disputed issues of fact as to whether defendants violated these statutes, intentionally and materially. Thus, there are issues of fact as to causes of action two through seven that require a trial.

The Court has considered defendants' remaining arguments and finds them to be unavailing and/or non-dispositive.

Accordingly, defendants' motion for summary judgment dismissing every cause of action is denied in its entirety.

OAG'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ITS FIRST CAUSE OF ACTION

Summary Judgment Burden on Standalone Executive Law § 63(12) Cause of Action

OAG moves for partial summary judgment, seeking to hold defendants liable under OAG's first cause of action, for fraud under Executive Law § 63(12).

As this Court has noted *ad nauseum*, Executive Law § 63(12) "authorizes the Attorney General to bring a special proceeding against any person or business that engages in repeated or persistent fraudulent or illegal conduct, while broadly construing the definition of fraud so as to include acts characterized as dishonest or misleading and eliminating the necessity for proof of an intent to defraud." People v Apple Health & Sports Club, Ltd., Inc., 206 AD2d 266-267 (1st Dept 1994).

As OAG's first cause of action, the only one upon which it moves for summary judgment, alleges a standalone violation of Executive Law § 63(12), OAG need only prove: (1) the SFCs were false and misleading; and (2) the defendants repeatedly or persistently used the SFCs to transact business.

This instant action is essentially a "documents case." As detailed *infra,* the documents here clearly contain fraudulent valuations that defendants used in business, satisfying OAG's burden to establish liability as a matter of law against defendants. Defendants' respond that: the documents do not say what they say; that there is no such thing as "objective" value; and that, essentially, the Court should not believe its own eyes.[9]

The defenses Donald Trump attempts to articulate in his sworn deposition are wholly without basis in law or fact. He claims that if the values of the property have gone up in the years since the SFCs were submitted, then the numbers were not inflated at that time (i.e.; "But you take the 2014 statement, if something is much more valuable now – or, I guess, we'll have to pick a date which was a little short of now. But if something is much more valuable now, then the number that I have down here is a low number"). NYSCEF Doc. No. 1363 at 69-75). He also seems to imply that the numbers cannot be inflated because he could find a "buyer from Saudi Arabia" to pay any price he suggests.[10] Id. at 30-33, 60-62, 79-80.

The Trump Tower Triplex

This Court takes judicial notice that the Trump Tower apartment in which Donald Trump resided for decades (the "Triplex") is 10,996 square feet. NYSCEF Doc. No. 816 at 2. Between 2012-2016, Donald Trump submitted SFCs falsely claiming that the Triplex was 30,000 square feet, resulting in an overvaluation of between $114-207 million dollars. NYSCEF Doc. Nos. 782 at Rows 833-834, 1028, 783 at Rows 799-800, 1199, 784 at Rows 843-844, 785 at Rows 882-883, 789 at Row 913, 817. The misrepresentation continued even after defendants received written notification from *Forbes* that Donald Trump had been overestimating the square footage of the Triplex by a factor of three.[11]

In opposition, defendants absurdly suggest that "the calculation of square footage is a subjective process that could lead to differing results or opinions based on the method employed to conduct the calculation.[12]" NYSCEF Doc. No. 1293 at 20. Well yes, perhaps, if the area is rounded or oddly shaped, it is possible measurements of square footage could come to slightly differing results due to user error. Good-faith measurements could vary by as much as 10-20%, not 200%.

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[9] As Chico Marx, playing Chicolini, says to Margaret Dumont, playing Mrs. Gloria Teasdale, in "Duck Soup," "well, who ya gonna believe, me or your own eyes?"

[10] This statement may suggest influence buying more than savvy investing.

[11] Three days after receiving a written inquiry from *Forbes*, Trump Organization Vice President, Amanda Miller, sent an email to Trump Organization Executive Vice President and Chief Legal Officer, Alan Garten, indicating that she "spoke to Allen W[eisselberg] re: [Trump World Tower and Trump Tower] – we are going to leave those alone." NYSCEF Doc. No. 821. Although OAG need not show intent to deceive under a standalone § 63(12) cause of action, this directive to continue to use a grossly inflated number despite clear knowledge it is false demonstrates the repetitive and ongoing nature of defendants' propensity to engage in fraud.

[12] Despite this assertion in their motion papers, counsel for defendants, Christopher Kise, Esq, conceded during oral argument held on September 22, 2023, that square footage is, in fact, an objective number.

A discrepancy of this order of magnitude, by a real estate developer sizing up his own living space of decades, can only be considered fraud.[13]

OAG unquestionably satisfies its two-prong burden of demonstrating the SFCs from 2012-2016 calculated the value of the Triplex based on a false and misleading square footage, and that some of the defendants repeatedly and persistently used the SFCs to transact business.

Seven Springs Estate

Defendant Seven Springs LLC owns over 200 acres of contiguous land in the towns of Bedford, New Castle and North Castle in Westchester County, New York.

In 2000, non-party the Royal Bank of Pennsylvania appraised the "as is" market value of Seven Springs to be $25 million if converted to residential development. NYSCEF Doc. No. 825. In 2006, the same bank performed a new appraisal, which showed Seven Springs had an "as is" market value of $30 million. NYSCEF Doc. No. 826.

In 2012, Seven Springs LLC received another appraisal that estimated a six-lot subdivision on the New Castle portion of the property to have a fair market value of approximately $700,000 per-lot. NYSCEF Doc. No. 829 at 203-206.

In July 2014, because the Trump Organization was considering donating a conservation easement, it retained Cushman & Wakefield to provide a "range of value" of the Seven Springs property. NYSCEF Doc. Nos. 830, 831. Cushman & Wakefield's appraiser, David McArdle, analyzed the sale of eight lots in Bedford, six lots in New Castle, and ten lots in North Castle and determined the fair market value for all 24 lots was approximately $30 million. NYSCEF Doc. No. 831, 832.

Notwithstanding receiving market values from professional appraisals in 2000, 2006, 2012, and 2014 valuing Seven Springs at or below $30 million, Donald Trump's 2011 SFC reported the value to be $261 million, and his 2012, 2013 and 2014 SFCs reported the value to be $291 million.[14] NYSCEF Doc. Nos. 769, 770, 771, 772.

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[13] In fact, OAG demonstrates that as of 2012, no apartment sold in New York City had ever approached the price at which defendants valued the Triplex, noting that the highest overall sale at that time was $88 million for a Central Park West penthouse. The SFCs valued the Triplex at a staggering $180,000,000-$327,000,000 for the years 2012-2016. NYSCEF Doc. No. 1 at ¶276.

[14] The statutes of limitations have run for all claims that accrued before July 13, 2014. However, although not actionable by themselves, evidence of fraud that predates July 13, 2014, may still be used as evidence in evaluating OAG's request for permanent injunctive relief, wherein the Court must determine whether there has been "a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d 490, 496-97 (2016) (detailing standard for permanent injunctive relief under Executive Law 63(12) and "reject[ing] defendants' arguments that the Attorney General must show irreparable harm in order to obtain a permanent injunction").

In early 2016, Cushman & Wakefield performed another appraisal of Seven Springs, which included the planned development, and determined that as of December 1, 2015, the entire parcel was worth $56.6 million. NYSCEF Doc. Nos. 824 at 9; 875; 876.

Even giving defendants the benefit of the $56.6 million figure as of December 1, 2015, the value submitted on Donald Trump's 2014 SFC was inflated by over 400%. Accordingly, OAG has demonstrated liability for the false 2014 SFC for fraudulently inflating the value of Seven Springs.

Trump Park Avenue

Trump Park Avenue is a residential building included as an asset on Donald Trump's SFCs for the years 2011-2021. NYSCEF Doc. Nos. 769-779. In 2011, 12 of the unsold residential condominium units were subject to New York City's rent regulation laws. NYSCEF Doc. No. 948 at 3. By 2014, nine units remained subject to rent restrictions. NYSCEF Doc. No. 966. By 2020, six units remained subject to rent restrictions. NYSCEF Doc. No. 971.

A 2010 appraisal performed by the Oxford Group valued the 12 rent-stabilized units at $750,000 total, or $62,500 per unit. NYSCEF Doc. No. 952. A 2020 appraisal performed by Newmark Knight Frank valued the six units that remained subject to stabilization at $22,800,090 total, or $3,800,315 per unit. NYSCEF Doc. No. 972.

Notwithstanding, for the years 2014-2021, the Trump Organization submitted SFCs that valued these rent-restricted units as if they were unencumbered, inflating the value of each unit between as much 700% (in 2014) and 64% (in 2021). NYSCEF Doc. Nos. 772-779.

In an unsuccessful attempt to rebut OAG's prima facie demonstration, defendants proffer that the units are not overvalued because "the rent-stabilized units have the potential at some point in the future to be converted into unencumbered (by rent stabilization) units."[15] NYSCEF Doc. No. 1292 at 57. They further concede that "[t]his is the assumption the owner made when assessing potential asset pricing or value." Id.

[15] As every New Yorker knows, rent regulated units may be passed on from one generation to the next in perpetuity.

However, the SFCs are required to state "current" values, not "someday, maybe" values. At the time defendants provided the subject SFCs to third parties they unquestionably falsely inflated the value of the units based on a false premise that they were unrestricted.[16]

40 Wall Street

The Trump Organization, through defendant 40 Wall Street LLC, owns a ground lease at 40 Wall Street and pays ground rent to the landowner.

In 2010, Cushman & Wakefield appraised the Trump Organization's interest in 40 Wall Street at $200 million. NYSCEF Doc. Nos. 878-79. Cushman & Wakefield appraised again in 2011 and 2012, reaching valuations of between $200 and $220 million. NYSCEF Doc. Nos. 881-82. The Trump Organization possessed and was familiar with these appraisals. NYSCEF Doc. Nos. 817 at 135-138; 883.

Despite these appraisals, the 2011 and 2012 SFCs valued the Trump Organization's interest in the property at $524.7 million and $527.2 million, respectively, an overvaluation of more than $300 million each year.[17] NYSCEF Doc. Nos. 769, 770.

In 2015, Cushman & Wakefield once again appraised the property, and valued it at $540 million.[18] NYSCEF Doc. No. 887. Notwithstanding this appraised value, the 2015 SFC listed the value of 40 Wall Street at $735.4 million.[19] NYSCEF Doc. No. 773.

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[16] Mazars accountant Donald Bender testified that when he asked Jeffrey McConney, "Do you have any other appraisals?", Jeffrey McConney stated "I have nothing else," demonstrating an intent to conceal or mislead the accountants. NYSCEF Doc. No. 1262 at 243.

Further, Patrick Birney, a Trump Organization employee working directly under Jeffrey McConney, conceded that the Trump Organization maintained a spreadsheet for day-to-day operations on the Trump Park Avenue offering plan that included both the offering plan prices *and* the current market values, but that the Trump Organization concealed its own actual market estimates from Mazars by omitting the market value column in its spreadsheet and providing Mazars with only the offering plan prices. NYSCEF Doc. No. 946.

[17] Although any liability arising out of the submission of the 2011 and 2012 SFCs is time barred; as previously discussed, these submissions may be considered as evidence in support of OAG's request for injunctive relief.

[18] OAG plausibly asserts that this $540 million is also inflated; however, for purposes of this motion, OAG does not dispute the number, and argues that, even if the Court were to accept defendants' number as accurate, the 2015 SFC was still materially false, as it stated the value as nearly $200 million more than the $540 million appraisal. NYSCEF Doc. No. 766 at n 7.

[19] An email exchange dated August 4, 2014, between Allen Weisselberg and his son, Jack Weisselberg, a Ladder Capital employee, discusses the 2015 $540 million Cushman & Wakefield appraisal. NYSCEF Doc. No. 888. Notwithstanding direct knowledge of it, the 2015 SFC valued 40 Wall Street at nearly $200 million more. NYSCEF Doc. No. 773.

Defendants assert that overvaluations of two hundred million dollars are immaterial, as the "NYAG has produced no evidence to suggest... that Ladder Capital would have been uncomfortable allowing President Trump to guarantee the 40 Wall Street Loan if his net worth was only $1.9 billion, as the NYAG contends." NYSCEF Doc. No. 835 at 48. They further emphasize that "Ladder Capital has received in excess of $40 million in interest and 40 Wall Street LLC has never defaulted under the Loan."[20] Id.

Defendants' argument misses the mark. As has been explained to defendants many times, in many legal proceedings, and in painstaking detail, "where, as here, there is a claim based on fraudulent activity [under Executive Law 63(12)], disgorgement may be available as an equitable remedy, *notwithstanding the absence of loss to individuals or independent claims for restitution.*" Ernst & Young at 569 (emphasis added). Accordingly, it is not significant that the banks made money (or did not lose money)[21], or that they would have done business with the Trump Organization notwithstanding. The law is clear that the only requirements for liability to attach under a standalone Executive Law § 63(12) cause of action are (1) a finding that the SFCs were false and misleading; and (2) that defendants repeatedly or persistently used the SFCs to conduct business.

Accordingly, OAG has demonstrated liability for the false valuation of 40 Wall Street in the 2015 SFC.

Mar-a-Lago

Donald Trump purchased Mar-a-Lago in 1985. In 1993, he sought, and obtained, permission from the Town of Palm Beach to turn the property into a social club (NYSCEF Doc. No. 900), and on August 10, 1993, he entered into a "Declaration of Use Agreement" by which he agreed "the use of Land shall be for a private social club" and that "[a]ny additional uses of the Land shall be subject to approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Landmarks Preservation Commission of the Town, the Architectural Review Commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or any agencies under the foregoing governmental authorities." NYSCEF Doc. No. 915.

In 1995, Donald Trump signed a "Deed of Conservation and Preservation Easement" in which he gave up his right to use Mar-a-Lago for any purpose other than as a social club (the "1995 Deed"). NYSCEF Doc. No. 901. In 2002, Donald Trump signed a "Deed of Development Rights." NYSCEF Doc. No. 902. As part of granting a conversation easement to the National

[20] The defendant borrowers did not default on any loans; but we only know that with hindsight. Markets are volatile, and borrowers come in all shapes and sizes. The next borrower, or the one after that, might default, and if its SFCs are false, the lender might unfairly be left holding the bag. This will distort the lending marketplace and deprive other potential borrowers of the opportunity to obtain loans and create wealth.

[21] The subject loans made the banks lots of money; but the fraudulent SFCs cost the banks lots of money. The less collateral for a loan, the riskier it is, and a first principal of loan accounting is that as risk rises, so do interest rates. Thus, accurate SFCs would have allowed the lenders to make even more money than they did.

Trust for Historic Preservation, Donald Trump agreed that "Trump intend[s] to forever extinguish [his] right to develop or use the Property for any purpose other than club use" (the "2002 Deed"). The 2002 Deed also specifically "limits changes to the Property including, without limitation, the division or subdivision of the Property for any purpose, including use as single family homes, the interior renovation of the mansion, which may be necessary and desirable for the sale of the Property as a single family residential estate, the construction of new buildings and the obstruction of open vistas." Id. In exchange for granting the easement, Mar-a-Lago was taxed at a significantly lower rate (the club rate) than it otherwise would have been (the private home rate). NYSCEF Doc. No. 903.

From 2011-2021, the Palm Beach County Assessor appraised the market value of Mar-a-Lago at between $18 million and $27.6 million. NYSCEF Doc. No. 905.

Notwithstanding, the SFCs' values do not reflect these land use restrictions. Donald Trump's SFCs for 2011-2021 value Mar-a-Lago at between $426,529,614 million and $612,110,496, an overvaluation of *at least 2,300%*, compared to the assessor's appraisal. NYSCEF Doc. Nos. 769-779.

In an attempt to rebut the OAG's demonstration, defendants rely on the opinion affidavit of Lawrence Moens, who they purport is "the most accomplished and knowledgeable ultra-high net worth real estate broker in Palm Beach, Florida."[22] Moens claims that "the SOFC were and are appropriate and indeed *conservative*." NYSCEF Doc. No. 1292 at 35-36 (emphasis added). The Moens' affidavit states in a conclusory fashion that because he believes "this unique property offers to an elite purchaser the unparalleled opportunity to own an exclusive and extensive family compound in the most desirable sections of Palm Beach... the valuations in the SOFC were reasonable and below my estimate for the market value of the property each year." NYSCEF Doc. No. 1435. Moreover, Moens opines that "[i]f Mar-A-Lago was available for sale, I am confident that in short order, I would be in a position to produce a ready, willing and able buyer who would have interest in securing the property for their personal use as a residence, or even, their own club." Id. at 29. Critically, Moens does not opine *at what price* he is "confident" he could find a buyer (although he opines separately, without relying on any objective evidence, that he believes that as of 2023 the property is worth $1.51 *billion*[23]).

It is well-settled that: "[w]here the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation, however, the opinion should be given no probative force and is insufficient to withstand summary judgment." Diaz v New York Downtown Hosp., 99 NY2d 542, 544 (2002); see also Gardner v Ethier, 173 AD2d 1002, 1003-4 (3d Dept 1991) ("the expert

[22] At oral argument, his domain of expertise was enlarged to nationwide status.

[23] In his sworn deposition, when asked "[w]ho were the dozen or so [qualified] buyers that you were referencing in your report, Lawrence Moens replied: "I could dream up anyone from Elon Musk to Bill Gates and everyone in between. Kings, emperors, heads of state. But with net worths in the multiple billions. I don't know how many people in the world have a net worth of more than $10 billion, but I think it's quite a number. There are a lot." NYSCEF Doc. No. 1428 at 184-185. Obviously, this Court cannot consider an "expert affidavit" that is based on unexplained and unsubstantiated "dream[s]."

affidavit is also inadmissible because it is conclusory and the views are apparently based to a great extent on hearsay statements from unspecified witnesses as well as upon speculations on the part of the expert"). Accordingly, defendants' reliance on the Moens affidavit is unpersuasive and certainly insufficient to rebut OAG's prima face case.

Defendants further imply that they may ignore the plain language of the 2002 Deed restrictions because they would likely be able to use the Florida judicial system to get out of their contractual requirements; they further assert that because they may successfully breach their contract in the future, they were not required to consider the restrictions of the 2002 Deed when valuing the property. NYSCEF Doc. 1292 at 48-51. This argument is wholly without merit. At the time in which the defendants submitted the SFCs, the restrictions were in effect, and any valuations represented to third-parties must have incorporated those restrictions; failure to do so is fraud. Assets values that disregard applicable legal restrictions are by definition materially false and misleading.

Accordingly, OAG has demonstrated liability for the false valuation of Mar-a-Lago as appears in the SFCs from 2014-2021.

Aberdeen

The Trump Organization owns a golf course located in Aberdeen, Scotland ("Aberdeen"). The value assigned to Aberdeen was comprised of two parts: a value for the golf course and a value for the development of the non-golf course property, the latter of which is the focus here. Developing any of the non-golf course property required that the local Scottish authorities approve any proposed plans.

From 2011-2014, Donald Trump's SFC reported that he had "received outline planning permission [from local Scottish authorities] in December 2008 for... a residential village consisting of 950 holiday homes and 500 single family residences and 36 golf villas." NYSCEF Doc. Nos. 769-776.

The Trump Organization had "outline planning permission" to build a total of 1,486 homes. Notwithstanding, the 2014-2018 SFCs valuations of Aberdeen assumed the Trump Organization had received approval to build 2,500 homes, despite never having received such approval. NYSCEF Doc. Nos. 772-776, 907.

Additionally, the approval of the 950 holiday homes and 36 golf villas came with severe restrictions on their use: they could be used solely as rental properties and could be rented for no more than 12 weeks in any calendar year. NYSCEF Doc. No. 908 at 13. The Trump Organization submitted financial documentation to the local Scottish authorities representing that these short-term rentals would not be profitable and therefore would not add any value to Aberdeen. NYSCEF Doc. Nos. 909 at 36, 910 at 7. Consequently, the only profitable development of Aberdeen would have been the 500 single family residences. In July 2017, non-party Ryden LLP, acting on behalf of the Trump Organization, prepared a development appraisal for Aberdeen wherein it assessed the profit from developing 557 homes and estimated profits in the range of £16,525,000-£18,546,000. NYSCEF Doc. No. 1231 at 10.

In May 2018, the Trump Organization applied to the Aberdeen City Council to reduce the scope of the development project to 550 dwellings, consisting of 500 private residences, 50 leisure/resorts units, and zero holiday homes (having determined they were not profitable). NYSCEF Doc. No. 911. In September 2019, the Aberdeen City Council approved the proposal for a reduction in the proposed development, but restricted the 50 leisure/resort units, as they had the holiday homes, to be "occupied on a holiday letting or fractional ownership basis only and for no other purposes whatsoever including use as a permanent residential unit... ." NYSCEF Doc. No. 907 at 7.

Notwithstanding, the 2019 SFC, finalized a month after the latest approval, derived a value based on the assumption that 2,035 private residential homes could be developed. Adjusting the values to reflect the permissible 500 private residences reduces the value of the Aberdeen undeveloped property as reflected in the 2019 SFC by £164,196.704. NYSCEF Doc. No. 777 at 16, 789 at Cells G561-619, 912.

Although defendants wholly fail to address Aberdeen in any of their three memos of law, in their response to OAG's statement of material facts, they state that "Defendants dispute the veracity of the appraisal because President Trump, as a land developer, took optimistic views of potential future value which is not contemplated in the appraisal, thereby undervaluing Trump Aberdeen." NYSCEF Doc. No. 1293 at 82-83. For all the reasons discussed *supra*, this defense fails.

Accordingly, OAG has demonstrated liability for the false valuation of Aberdeen as appears in the SFCs from 2014-2019.

US Golf Clubs

Donald Trump owns or leases a number of golf clubs across the United States and abroad that are included as assets on his SFCs. NYSCEF Doc. Nos. 769-779. The value for these golf clubs is provided in the aggregate in the SFCs, although supporting accounting spreadsheets evidence the breakdown of the values assigned to each club. NYSCEF Doc. Nos. 781-791.

The "Trump Brand Premium"

The evidence indicates that for the years 2013-2020, the SFCs relied on values that included a 15% or 30% "premium" based on the "Trump brand" for the following seven golf clubs: Trump National Golf Course ("TNGC") Jupiter, TNGC LA, TNGC Colts Neck, TNGC Philadelphia, TNGC DC, TNGC Charlotte, and TNGC Hudson Valley. NYSCEF Doc. Nos. 783-790. However, the SFCs for those years (and, indeed, all the years before this Court), also contained express language stating: "The goodwill attached to the Trump name has significant value that has *not* been reflected in the preparation of this financial statement." NYSCEF Doc. Nos. 769-779 (emphasis added). Accordingly, the SFCs "double dip," both purporting not to include a brand premium while simultaneously including one of 15% or 30%.

In opposition, defendants submit the affidavit of Eli Bartov, an accounting professor at New York University, who distinguishes between overall brand value and brand value ascribed to individual golf courses. His point, ensconced in numerous lines of academic jargon, seems to be that defendants said that they were eschewing the former and opting only for the latter. NYSCEF Doc. No. 1378 at 14-15. This is a red herring and factually incorrect. The SFCs

clearly state that they do not include a brand value for *any* of the properties included in the SFCs; indeed, the SFCs emphatically declare that "[t]he goodwill attached to the Trump name has significant financial value *that has not been reflected in the preparation of this financial statement.*" NYSCEF Doc. Nos. 769-779 (emphasis added). Perhaps Donald Trump could have ascribed a brand value to golf courses that he viewed as "special," but he was obligated to disclose those exceptions when he represented that the SFCs did not reflect his brand value.

TNGC Briarcliff and TNGC LA

The valuations of TNGC Briarcliff and TNGC LA were each comprised of a value for the golf course and a value for the undeveloped land. As the Trump Organization was considering donating a conservation easement over both properties, they had both properties appraised.

An April 2014 appraisal valued the golf club portion of TNGC Briarcliff at $16,500,000; later that same year, Donald Trump valued the golf club portion of TNGC Briarcliff at $73,430,217, *an inflation of more than 300%*, in his SFC. NYSCEF Doc. Nos. 923 at 147; 785 at Row 257. A 2015 appraisal valued the golf club portion of TNGC LA at $16,000,000 as of December 26, 2014; the 2015 SFC valued the golf club portion of TNGC LA at $56,615,895, *an inflation of more than 200%.* NYSCEF Doc. Nos. 924 at 151; 785 at Row 386.

In an attempt to rebut this strong showing of fraud, defendants argue that they were not obligated to use market value, but, instead, were permitted to use the "fixed assets" approach to valuation, pursuant to which defendants may "value" a property by aggregating the money spent to acquire and maintain a property. NYSCEF Doc. No. 1292. They further rely on the Bartov affidavit, which states, in wholly conclusory fashion that: "[t]he assertion that 'Using fixed assets approach does not present the golf clubs at their estimated current value because the approach ignores market conditions and the behavior of informed buyers and sellers' is unsubstantiated and false." NYSCEF Doc. No. 1378 at 29.

Bartov is incorrect. Each of the corresponding SFCs include representations that "[a]ssets are stated at their estimated current values..." NYSCEF Doc. Nos. 769-779.[24] Accordingly, it is false and misleading to use a fixed-assets evaluation, which is completely different. The price for which you purchase property is not necessarily the price for which you can sell it. The latter, not the former, matters to lenders who want adequate collateral.

The Membership Liabilities

As part of the purchase of several of the golf club properties, Donald Trump agreed to assume the obligation to pay back refundable non-interest-bearing long-term membership deposits. However, notwithstanding that these liabilities must be satisfied in the future, the SFCs from 2012-2021 value them at $0. NYSCEF Doc. Nos. 769-779. This is false; they are a liability in the millions of dollars.

[24] In their response to OAG's statement of material facts, defendants concede that "GAAP defines Estimated Current Value as 'the amount at which the item could be exchanged between a buyer and seller, each of whom is well informed and willing, and neither of whom is compelled to buy or sell." NYSCEF Doc No. 1293 at 17.

However, the SFCs all state: "The fact that Mr. Trump will have the use of these funds for that period without cost and that the source of repayment will most likely be a replacement membership has led him to value this liability at zero." See e.g., NYCSCEF Doc. No. 772.

Although it was false to report the membership liabilities as $0, it was not, under the circumstances, *misleading*, as the SFCs state that the reason for so doing. Accordingly, OAG cannot prevail on liability as a result of the failure to report the membership liabilities.

Yet, as discussed *supra*, OAG has demonstrated liability for submitting fraudulent SFCs in 2014-2020 that falsely value the aforementioned US Golf Clubs based on undisclosed brand premiums and failure to report "current" values.

Vornado Partnership Properties

Donald Trump has a 30% limited partnership interest with non-party Vornado Realty Trust in entities that own office buildings in New York City (at 1290 Avenue of the Americas, hereinafter "1290 AOA") and San Francisco at 555 California Street.

Cash/Liquid Classification

Donald Trump's 30% limited partnership stake does not permit him to use or withdraw funds held by the partnerships. NYSCEF Doc. Nos. 916, 917. Notwithstanding, Donald Trump and his trustees classified his 30% interest in the Vornado partnership as a liquid/cash asset on his SFCs for the years 2013-2021. NYSCEF Doc. No. 771-779. This was even though it is "undisputed" by defendants that Donald Trump does not have "the right to use or withdraw [these] funds." NYSCEF Doc. No. 1293 at ¶387-388.

Defendants assert that "[e]ven if the cash held in the partnership was misclassified and should have been reported elsewhere on the SOFCs as an asset (e.g., in the value of the partnership interest), it would not have inflated the total value of cash or President Trump's net worth reported on the SOFCs." NYSCEF Doc No. 1292 at 39.

This argument does not hold any water. Put simply, it was false and misleading for defendants to indicate that it had access to between $14,221,800 and $93,126,589 in liquid assets, sometimes nearly a third of the total cash it claimed, when in fact those assets were completely illiquid. NYSCEF Doc. No. 1293 ¶ 403.

The Appraisals

Cushman & Wakefield appraised the value of 1290 AOA at $2 billion as of November 1, 2012, and $2.3 billion as of November 1, 2016. NYSCEF Doc. No. 919 at 5-6.

However, Donald Trump's 2014 SFC calculated his 30% share based on a purported value of $3,078,338,462; his 2015 SFC was based on a purported value of $2,985,819,936; and his 2016 SFC was based on a purported value of $3,055,000,000. NYSCEF Doc. Nos. 784 at Rows 709-715, 785 at Rows 748-755, 785 at Rows 779-784. This resulted in overvaluations of Donald Trump's 30% interest in 1290 AOA of between $205-$233 million dollars for those years.

CBRE appraised 1290 AOA and determined its value at $2 billion as of October 7, 2021. NYSCEF Doc. No. 947. Nonetheless, the 2021 SFC was calculated based upon a purported value of $2,574,813,800, an overvaluation of Donald Trump's 30% share by $172 million dollars. NYSCEF Doc. No. 791 at Row 918.

The instant motions do not task this Court with determining which appraisals are the most accurate, which would present issues of fact.[25] Rather, time and time again, the Court is not comparing one appraisal to another; it is comparing an independent professional appraisal to a pie-in-the-sky dream of concocted potential.

Accordingly, OAG has demonstrated liability for submitting fraudulent SFCs overvaluing Donald Trump's interest in the Vornado partnership in 2014-2016 and 2021.

Licensing Deals

Each of Donald Trump's SFCs from 2011-2021 has an asset category entitled "Real Estate Licensing Deals," which the SFC represents is value derived from "associations with others for the purpose of developing and managing properties" and the "cash flow that is expected to be derived... from these associations as their potential is realized." NYSCEF Doc. Nos. 769-779. The SFCs further state that "[i]n preparing [these] assessment[s], Mr. Trump and his management considered only situations which have evolved to the point where signed arrangements with the other parties exist and fees and other compensation which he will earn are reasonably quantifiable." Id.

Despite this express language, the SFCs from 2014-2018 and 2020-2021 include valuations of intra-organization deals, all between entities under the Trump Organization umbrella, in this category of assets. NYSCEF Doc. Nos. 1014, 1018, 1019, 1021, 1023, 1024, 1062, 1063, 1064. It was flatly false and misleading to include values of deals between Trump Organization entities while expressly representing in the SFCs that such assets included only valuations derived from "association with others." Improperly including these intra-organization deals resulted in an overvaluation of up to $224 million in 2014, $110 million in 2015, $120 million in 2016, $113 million in 2017, $115 million in 2018, $97 million in 2020, and $106 million in 2021. Id.

OAG has demonstrated liability for the false and misleading valuation of intra-company licensing deals on the SFCs from 2014-2018 and 2020-2021.

The Other Loans

OAG has established that defendants submitted false SFCs after July 13, 2014, pursuant to their other loan commitments. Defendants submitted SFCs to Deutsche Bank as part of their contractual obligations arising out of three different loans: (1) a Chicago Loan, undertaken by 401 North Wabash Venture LLC; (2) a Doral Loan, undertaken by Trump Endeavor LLC; and (3) an Old Post Office Loan, undertaken by Trump Old Post Office LLC. Defendants certified the accuracy of these SFCs to Deutsche Bank for the years 2014-2019 and 2021[26] as part of their

[25] Nor is this Court asked to determine Donald Trump's total wealth.

[26] The gap for 2020 may have been due to the COVID-19 pandemic.

contractual obligations. NYSCEF Doc. Nos. 1097, 1098, 1099, 1100, 1102, 1104, 1106, 1124, 1126, 1155, 1156, 1157.

The Individual Defendants

OAG has demonstrated liability on behalf of all the named individual defendants: (1) **Donald Trump**, as each and every SFC was issued on behalf of "Donald J. Trump"; (2) **Donald Trump, Jr.**, who, along with Allen Weisselberg, certified the accuracy of the SFCs for 2016-2020, and who singlehandedly certified the accuracy of the 2021 SFC (NYSCEF Docs. No. 808-813); (3) **Eric Trump**, who is the listed source for the Seven Springs valuation in 2014,[27] and who signed several guarantor compliance certificates in 2020 and 2021 for Donald J. Trump (NYSCEF Doc. No. 802); (4) **Allen Weisselberg**, who certified the accuracy of the SFCs from 2014-2021 (NYSCEF Doc. Nos. 806-812); (5) and **Jeffrey McConney**, who led the process of preparing all the SFCs since the 1990s[28] (NYSCEF Doc. No. 822 at 52-68).

The Entity Defendants

It is settled law that "[a] parent corporation will not be held liable for the torts or obligations of a subsidiary *unless it can be shown that the parent exercised complete dominion and control over the subsidiary*." Potash v Port Auth. of New York & New Jersey, 279 AD2d 562, 562 (2d Dept 2001) (emphasis added). Here, it is undisputed that Donald Trump, through one corporate form or another, exercised complete control over the umbrella of entities operating in furtherance of, or on behalf of, "the Trump Organization."

Defendants do not dispute that DJT Holdings LLC and DJT Holdings Managing Member LLC are entities that sit at the top of the Trump Organization's organizational chart and together own many of the Trump-affiliated entities that comprise the Trump Organization. DJT Holdings Managing Member LLC owns 100% of the Trump Organization and DJT Holdings LLC owns 100% of the Trump Organization LLC. NYSCEF Doc. Nos. 4, 819 at ¶1.

Accordingly, OAG has established liability on behalf of all the named entity defendants: (1) **The Trump Organization Inc.**, **the Trump Organization LLC**, **DJT Holdings LLC**, and **DJT Holdings Managing Member LLC**, as each participated in the preparation, submission and certification of the SFCs after July 13, 2014 through the acts of the individual defendants as described *supra*; (2) the **DJT Revocable Trust**, as both Donald Trump Jr. and Allen Weisselberg certified the accuracy of the 2016-2019 SFCs in their capacities as "Trustee, the Donald J. Trump Revocable Trust dated April 7, 2014, as amended" (NYSCEF Doc. No. 808); (3) **Trump Endeavor LLC**, which was the borrower on the Doral Loan, for which SFCs were submitted after July 13, 2014; (4) **401 North Wabash Venture LLC**, which was the borrower on a loan for "Trump Chicago," under which SFCs were required to be (and were) submitted

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[27] Eric Trump also reaffirmed the SFCs accuracy on July 9, 2019. NYSCEF Doc. Nos. 782 at Row 679, 783 at Rows 638-40, 784 at Row 660, 1183.

[28] Jeffrey McConney acknowledged his personal role in preparing supporting data for Donald Trump's SFCs beginning in 2011, testifying that: "I assemble the documentation" and that he would send both supporting data spreadsheets and backup documentation to the accountants. He further conceded that the supporting data spreadsheets were referred to as "Jeff's supporting data" or "Jeff's supporting schedule." NYSCEF Doc. No. 822 at 40, 67-68, 212, 294.

after July 13, 2014; (5) **Trump Old Post Office LLC**, as it was the borrower on the "Old Post Office" loan, under which SFCs were required to be (and were) submitted after July 13, 2014; and **Seven Springs LLC**, the borrowing entity (as described *supra*) under which SFCs were required to be (and were) submitted after July 13, 2014.

Injunctive Relief

OAG has prevailed on liability on its first cause of action pursuant to Executive Law § 63(12) as against all defendants: Donald J. Trump; Donald Trump, Jr.; Eric Trump; Allen Weisselberg; Jeffrey McConney; the DJT Revocable Trust; the Trump Organization Inc; the Trump Organization LLC; DJT Holdings LLC; DJT Holdings Managing Member LLC; Trump Endeavor 12 LLC; 401 North Wabash Venture LLC; Trump Old Post Office LLC; 40 Wall Street LLC; and Seven Springs LLC.

If liability is established under Executive Law § 63(12), the statute itself provides that the attorney general may obtain "an order enjoining the continuance of such business activity or of any fraudulent or illegal acts... and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of ... section one hundred thirty of the general business law...."

"[T]he Attorney General may obtain permanent injunctive relief under... Executive Law § 63(12) upon a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d at 496-97 (further stating "[t]his is not a 'run of the mill' action for an injunction, but rather one authorized by remedial legislation, brought by the Attorney-General on behalf of the People of the State and for the purposes of preventing fraud and defeating exploitation") (internal citations omitted).

Having found, at the commencement of the action, that OAG had preliminarily demonstrated defendants' "propensity to engage in persistent fraud," this Court appointed the Hon. Barbara S. Jones (ret.) as an independent monitor "to ensure there is no further fraud or illegality that violates § 63(12) pending the final disposition of this action." NYSCEF Doc. No. 194. On August 3, 2023, Judge Jones reported as follows:

> [S]ince my appointment I have reviewed material financial and accounting information submitted by the Trump Organization. As part of my review, I have made preliminary observations regarding certain current financial disclosures with respect to the Trump Organization's reporting of financial information. Specifically, I have observed that information regarding certain material liabilities provided to lenders – such as intercompany loans between or among Trust entities and Donald J. Trump, certain of the Trust's contingent liabilities, as well as refundable golf club membership deposits—has been incomplete. The Trust also has not consistently provided all required annual and quarterly certifications attesting to the accuracy of certain financial statements.

> In addition, annual audited financial statements for certain entities, prepared by an external accounting firm, list depreciation expenses. However, interim internally prepared financial statements provided to third parties for these same entities inconsistently report depreciation expenses.

NYSCEF Doc. No. 647. Even with a preliminary injunction in place, and with an independent monitor overseeing their compliance, defendants have continued to disseminate false and misleading information while conducting business. This ongoing flouting of this Court's prior order, combined with the persistent nature of the false SFCs year after year, have demonstrated the necessity of canceling the certificates filed under GBL § 130, as the statute provides. People v Northern Leasing, 70 Misc 3d 256, 279-80 (Sup Ct, NY County 2020) (denying a trial on the petition and ordering the LLC respondents to dissolve upon a finding of persistent fraud under Executive Law § 63(12)).

Having prevailed on liability on a standalone Executive Law § 63(12) cause of action, the Attorney General is entitled to the first two prayers for relief sought in her complaint: (1) canceling any certificate filed under and by virtue of the provisions of New York General Business Law § 130 for all the entity defendants found liable, as well as any other entity controlled or beneficially owned by the individual defendants found liable herein, which and who participated in or benefitted from the foregoing fraudulent schemes; and (2) appointing an independent monitor to oversee compliance, financial reporting, valuations, and disclosures to lenders, insurers, and tax authorities at the Trump Organization. NYSCEF Doc. No. 1 at 213.

Remaining Issues to be Determined at Trial

Anything presented in the parties' moving papers that this Court has not ruled upon in this Decision and Order, including determinations on liability for the second through seventh causes of action, the amount of disgorgement of profits to which OAG is entitled, and determinations on the third through ninth prayers for relief sought by OAG in its complaint, presents disputed issues of fact that shall proceed to trial.

Conclusion

For the reasons stated herein, it is hereby

ORDERED that defendants' motion for summary judgment is denied; and it is further

ORDERED that plaintiff's motion for sanctions is granted in part, to the extent of sanctioning Michael Madaio, Esq. (Habba Madaio & Associates, LLP), Clifford S. Robert, Esq. (Robert & Robert PLLC), Michael Farina Esq. (Robert & Robert PLLC), Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC), and Armen Morian (Morian Law PLLC) in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Decision and Order; and it is further

ORDERED that plaintiff's motion for partial summary judgment on its first cause of action is granted in part, to the extent of finding defendants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, the DJT Revocable Trust, the Trump Organization Inc, the Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC to be liable as a matter of law for persistent violations of Executive Law § 63(12); and it is further

ORDERED that any certificates filed under and by virtue of GBL § 130 by any of the entity defendants or by any other entity controlled or beneficially owned by Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney are canceled; and it is further

ORDERED that within 10 days of the date of this order, the parties are directed to recommend the names of no more than three potential independent receivers to manage the dissolution of the canceled LLCs; and it is further

ORDERED that the Hon. Barbara S. Jones (ret.) shall continue to serve as an independent monitor of the Trump Organization until further Court order; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

9/26/2023
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[X]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

vs.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC,

Defendants.

Index No. 452564/2022

AFFIRMATION OF SERVICE

Motion Seq. No. 028

CHRIS D. KRIMITSOS, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms the following statements to be true under the penalty of perjury:

1. I am an associate of the law firm of Robert & Robert PLLC, and am not a party to the above-captioned action.

2. On October 23, 2023, I served the within Notice of Appeal and Informational Statement, both dated October 23, 2023, together with a copy of the Decision and Order of the Supreme Court of the State of New York, New York County (Honorable Arthur F. Engoron, J.S.C.), dated September 26, 2023, with Notice of Entry, upon the following parties, at the addresses listed after each party's name, by depositing a true copy of same enclosed in a postpaid

properly addressed wrapper in official deposit under the exclusive care and custody of the United States Postal Service within the State of New York:

Kevin C. Wallace, Esq.
Colleen K. Faherty, Esq.
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Counsel for Plaintiff

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Counsel for Defendants Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

Dated: Uniondale, New York
October 23, 2023

Chris D. Krimitsos
CHRIS D. KRIMITSOS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

v.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

Defendants.

Clifford S. Robert, Esq.,

Attorney for Defendants.

Index No: 452564/2022

Engoron, J.S.C.

NOTICE OF APPEAL

Motion Seq. No. 028

PLEASE TAKE NOTICE THAT, pursuant to CPLR §§ 5511 and 5515, Clifford S. Robert, Esq. (hereinafter referred to as "Mr. Robert"), hereby appeals to the Appellate Division, First Department, from the Decision and Order on Motion by Hon. Arthur F. Engoron, J.S.C., dated September 26, 2023 (NYSCEF Doc. No. 1533), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on September 27, 2023, and served by Notice of Entry on September 27, 2023, which granted Plaintiff's motion for sanctions.

This appeal is taken from each and every part of the Order insofar as Mr. Robert is aggrieved. A copy of the Informational Statement pursuant to 22 NYCRR 1250.3(a) is attached hereto as Exhibit A.

Dated: New York, New York
October 23, 2023

Respectfully submitted,

CLIFFORD S. ROBERT
MICHAEL FARINA
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-and-

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EXHIBIT “A”

Supreme Court of the State of New York
Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

- against -

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC.,THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type

- ☒ Civil Action
- ☐ CPLR article 75 Arbitration
- ☐ Action Commenced under CPLR 214-g
- ☐ CPLR article 78 Proceeding
- ☐ Special Proceeding Other
- ☐ Habeas Corpus Proceeding

Filing Type

- ☒ Appeal
- ☐ Original Proceedings
  - ☐ CPLR Article 78
  - ☐ Eminent Domain
  - ☐ Labor Law 220 or 220-b
  - ☐ Public Officers Law § 36
  - ☐ Real Property Tax Law § 1278
- ☐ Transferred Proceeding
  - ☐ CPLR Article 78
  - ☐ Executive Law § 298
- ☐ CPLR 5704 Review

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

☐ Administrative Review	☒ Business Relationships	☒ Commercial	☐ Contracts
☐ Declaratory Judgment	☐ Domestic Relations	☐ Election Law	☐ Estate Matters
☐ Family Court	☐ Mortgage Foreclosure	☐ Miscellaneous	☐ Prisoner Discipline & Parole
☐ Real Property (other than foreclosure)	☒ Statutory	☐ Taxation	☐ Torts

Appeal

Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

☐ Amended Decree	☐ Determination	■ Order	☐ Resettled Order
☐ Amended Judgement	☐ Finding	☐ Order & Judgment	☐ Ruling
☐ Amended Order	☐ Interlocutory Decree	☐ Partial Decree	☐ Other (specify):
■ Decision	☐ Interlocutory Judgment	☐ Resettled Decree	
☐ Decree	☐ Judgment	☐ Resettled Judgment	

Court: Supreme Court	County: New York
Dated: 09/26/2023	Entered: 09/27/2023
Judge (name in full): Hon. Arthur F. Engoron	Index No.: 452564/2022
Stage: ■ Interlocutory ☐ Final ☐ Post-Final	Trial: ☐ Yes ■ No If Yes: ☐ Jury ☐ Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? ■ Yes ☐ No

If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

2023-04925

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: ☐ Order to Show Cause ☐ Notice of Petition ☐ Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court	County: Choose County
Judge (name in full):	Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Clifford S. Robert, Esq., appeals from the Decision and Order of Supreme Court, New York County (Hon. Arthur F. Engoron, J.S.C.), dated September 26, 2023 and entered by the Clerk of the Court on September 27, 2023, which granted Plaintiff's motions for sanctions.

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Whether Supreme Court committed errors of law and/or fact, abused its discretion, and/or acted in excess of its jurisdiction by, inter alia, granting Plaintiff's motion for sanctions against Clifford S. Robert, Esq. in the amount of $7,500.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	PEOPLE OF THE STATE OF NEW YORK	Plaintiff	Respondent
2	DONALD J. TRUMP	Defendant	None
3	DONALD TRUMP, JR.	Defendant	None
4	ERIC TRUMP	Defendant	None
5	ALLEN WEISSELBERG	Defendant	None
6	JEFFREY MCCONNEY	Defendant	None
7	THE DONALD J. TRUMP REVOCABLE TRUST	Defendant	None
8	THE TRUMP ORGANIZATION, INC.	Defendant	None
9	THE TRUMP ORGANIZATION LLC	Defendant	None
10	DJT HOLDINGS LLC	Defendant	None
11	DJT HOLDINGS MANAGING MEMBER	Defendant	None
12	TRUMP ENDEAVOR 12 LLC	Defendant	None
13	401 NORTH WABASH VENTURE LLC	Defendant	None
14	TRUMP OLD POST OFFICE LLC	Defendant	None
15	40 WALL STREET LLC	Defendant	None
16	SEVEN SPRINGS LLC	Defendant	None
17	Clifford S. Robert, Esq.	Petitioner	Appellant
18			
19			
20			

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Kevin C. Wallace, Esq. and Colleen K. Faherty, Esq., Office of the New York State Attorney General			
Address: 28 Liberty Street			
City: New York	**State:** New York	**Zip:** 10005	**Telephone No:** 212-416-6046
E-mail Address: kevin.wallace@ag.ny.gov; colleen.faherty@ag.ny.gov			
Attorney Type: ☐ Retained ☐ Assigned ■ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 1			
Attorney/Firm Name: Alina Habba, Esq. and Michael Madaio, Esq., Habba Madaio & Associates, LLP			
Address: 112 West 34th Street, 17th &18th Floors			
City: New York	**State:** New York	**Zip:** 10020	**Telephone No:** 908-869-1188
E-mail Address: ahabba@habbalw.com; mmadaio@habbalaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 2, 5-16			
Attorney/Firm Name: Christopher M. Kise, Esq., Continental PLLC			
Address: 101 North Monroe Street, Suite 750			
City: Tallahassee	**State:** Florida	**Zip:** 32301	**Telephone No:** 305-677-2707
E-mail Address: ckise@continentalpllc.com			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ■ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 7, 10-16			
Attorney/Firm Name: Clifford S. Robert, Esq. and Michael Farina, Esq., Robert & Robert PLLC			
Address: 526 RXR Plaza			
City: Uniondale	**State:** New York	**Zip:** 11556	**Telephone No:** 516-832-7000
E-mail Address: crobert@robertlaw.com; mfarina@robertlaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 3-4			
Attorney/Firm Name: Michael S. Ross, Esq., Law Offices of Michael S. Ross			
Address: 640 East 42nd Street, 47th Floor			
City: New York	**State:** NY	**Zip:** 10165	**Telephone No:** 212-505-4060
E-mail Address: michaelross@rosslaw.org			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ■ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 17			
Attorney/Firm Name:			
Address:			
City: New York	**State:** NY	**Zip:** 10165	**Telephone No:**
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

-against-

DONALD J. TRUMP, *et al.*,

Defendants.

Index No. 452564/2022

NOTICE OF ENTRY

PLEASE TAKE NOTICE that annexed hereto is a true and correct copy of the Decision and Order of the Honorable Arthur F. Engoron, J.S.C. dated September 26, 2023, on Motion Sequence Numbers 027, 028, and 029 (NYSCEF Nos. 1531, 1532, 1533), filed and entered in the Office of the Clerk of the Supreme Court, New York County on the 27th day of September, 2023.

Dated: New York, New York
September 27, 2023

LETITIA JAMES
Attorney General of the State of New York

By: */s/ Colleen K Faherty*
Colleen K. Faherty
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colleen.faherty@ag.ny.gov

Attorney for the People of the State of New York

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON **PART** 37

Justice

----------X

INDEX NO. 452564/2022

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

MOTION DATES 08/30/2023, 08/30/2023, 09/05/2023

Plaintiff,

MOTION SEQ. NO. 026, 027, 028

- v -

DONALD J. TRUMP, DONALD TRUMP JR, ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

DECISION + ORDER ON MOTIONS

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 026) 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1292, 1293, 1294, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415,

1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1442, 1443, 1444, 1445, 1446, 1447

were read on this motion for PARTIAL SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 027) 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1474

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 028) 1263, 1264, 1265, 1276, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473

were read on this motion for SANCTIONS.

Upon the foregoing documents, it is hereby ordered that defendants' motion for summary judgment is denied, plaintiff's motion for partial summary judgment is granted in part, and plaintiff's motion for sanctions is granted in part, all as detailed herein.

This action arises out of a years-long investigation that plaintiff, the Office of the Attorney General of the State of New York ("OAG"), conducted into certain business practices that defendants engaged in from 2011 through 2021. OAG alleges that the individual and entity defendants committed repeated and persistent fraud by preparing, certifying, and submitting to lenders and insurers false and misleading financial statements, thus violating New York Executive Law § 63(12).

Procedural Background

In 2020, OAG commenced a special proceeding seeking to enforce a series of subpoenas against various named defendants and other persons and entities. This Court presided over that proceeding and issued several orders compelling compliance with OAG's subpoenas. See People v The Trump Org., Sup Ct, NY County, Index No. 541685/2020. During that proceeding, OAG and the Trump Organization entered into an agreement, which, broadly speaking, tolled the statute of limitations from November 5, 2020, through May 31, 2022. NYSCEF Doc. No. 1260.

On November 3, 2022, this Court found preliminarily that defendants had a propensity to engage in persistent fraud by submitting false and misleading Statements of Financial Condition ("SFCs") on behalf of defendant Donald J. Trump ("Donald Trump"). NYSCEF Doc. No. 183. Accordingly, the Court granted a preliminary injunction against any further fraud and appointed the Hon. Barbara S. Jones (ret.) as an independent monitor to oversee defendants' financial statements and significant asset transfers. NYSCEF Doc. Nos. 193 and 194.

Defendants moved to dismiss the complaint. In a Decision and Order dated January 6, 2023, this Court denied the motion. NYSCEF Doc. Nos. 453. Defendants appealed, resulting in a January 6, 2023 Order wherein the Appellate Division, First Department modified this Court's order to the extent of: (1) declaring that the "continuing wrong doctrine does not delay or extend [the statute of limitations]"; (2) finding that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and timely against defendants not subject to the tolling agreement if they accrued after February 6, 2016; and (3) dismissing the complaint as against defendant Ivanka Trump on statute of limitations grounds, finding that she was not an employee of the Trump Organization at the time at which the parties entered into the tolling agreement. People v Trump, 217 AD3d 609 (1st Dept 2023).

The Appellate Division declined to dismiss *any* other defendants or *any* causes of action.

Discovery ended on July 28, 2023, and OAG filed a note of issue shortly thereafter. NYSCEF Doc. No. 644. OAG now moves for partial summary judgment on its first cause of action, for fraud under Executive Law § 63(12). NYSCEF Doc. No. 765. Separately, plaintiff now moves, pursuant to 22 NYCRR 130-1.1, to sanction defendants for frivolous motion practice. NYSCEF Doc. No. 1263. Defendants also move for summary judgment, seeking to dismiss the complaint in its entirety. NYSCEF Doc. No. 834.

Executive Law § 63(12)

Executive Law § 63(12) provides, as here pertinent, as follows:

> Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of section four hundred forty of the former penal law or section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper. The word "fraud" or "fraudulent" as used herein shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions. The term "persistent fraud" or "illegality" as used herein shall include continuance or carrying on of any fraudulent or illegal act or conduct. The term "repeated" as used herein shall include repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON ALL CAUSES OF ACTION

Arguments Defendants Raise Again

Standing and Capacity to Sue

Defendants' arguments that OAG has neither capacity nor standing to sue under Executive Law § 63(12), and that the disclaimers of non-party accountants Mazars insulate defendants, invoke the time-loop in the film "Groundhog Day." This Court emphatically rejected these arguments in its preliminary injunction decision and in its dismissal decision, and the First Department affirmed both. Defendants' contention that a different procedural posture mandates a reconsideration, or *a fortiori*, a reversal, is pure sophistry[1].

As this Court and others have made abundantly clear, "[i]t is not disputed that the Attorney General is empowered to sue for violations of [Executive Law § 63(12)]." People v Greenberg, 21 NY3d 439, 446 (2013) (finding Executive Law § 63(12) to be broadly worded anti-fraud device); People v Ford Motor Co., 74 NY2d 495, 502 (1989) ("Executive Law § 63(12) is the procedural route by which the Attorney-General may apply to Supreme Court for an order enjoining repeated illegal or fraudulent acts").

Parens Patriae and Consumer Ambit

Defendants repeat the erroneous argument that the complaint must be dismissed because OAG cannot demonstrate the requirements of a *parens patriae* action, which is one in the public interest. "*Parens patriae* is a common-law standing doctrine that permits the state to commence an action to protect a public interest, like the safety, health or welfare of its citizens." People v Grasso, 11 NY3d 64, 72 at n 4 (2008). Invocation of such doctrine, or its requirements, is not necessary where, as here, the New York legislature has specifically empowered the Attorney General to bring such an action pursuant to Executive Law § 63(12). People v Credit Suisse Sec. (USA) LLC, 31 NY3d 622, 633 (2018) ("it is undisputed that Executive Law § 63(12) gives the Attorney General standing to redress liabilities recognized elsewhere in the law, expanding the scope of available remedies"); People v Trump Entrepreneur Initiative LLC, 137 AD3d 409, 417 (1st Dept 2016) ("[E]ven apart from prevailing authority, the language of the statute itself appears to authorize a cause of action; like similar statutes that authorize causes of action, § 63(12) defines the fraudulent conduct that it prohibits, authorizes the Attorney General to commence an action or proceeding to foreclose that conduct, and specifies the relief, including equitable relief, that the Attorney General may seek").

In any event, even if compliance with the requirements of the *parens patriae* doctrine is necessary, which it is not, OAG has easily satisfied those requirements, as it is well-settled that "[i]n varying contexts, courts have held that a state has a quasi-sovereign interest in protecting the integrity of the marketplace." Grasso at 69 n 4; People v Coventry First LLC, 52 AD3d 345, 346 (1st Dept 2008) ("the claim pursuant to Executive Law § 63(12) constituted proper exercises

[1] Indeed, the Court made this crystal clear in its January 6, 2023 order when it found: "Here, the issues of capacity and standing, are pure issues of law and do not depend on a trial of disputed issues of fact. Simply put, who the instant parties are and what the law says, which determine capacity and standing, are not disputed issues of fact that need to be tried." NYSCEF Doc. No. 453 at 4.

of the State's regulation of businesses within its borders in the interest of securing an honest marketplace"); People v Amazon.com, Inc., 550 F Supp 3d 122, 130-131 (SD NY 2021) ("[T]he State's statutory interest under § 63(12) encompasses the prevention of either 'fraudulent or illegal' business activities. Misconduct that is illegal for reasons other than fraud still implicates the government's interests in guaranteeing a marketplace that adheres to standards of fairness...").

Defendants' rehashed argument that OAG's complaint must be dismissed because it is not designed to protect consumers is unavailing. New York v Feldman, 210 F Supp 2d 294, 299-300 (SD NY 2002) ("[D]efendants' claim that section 63(12) is limited to consumer protection actions is simply incorrect. The New York Attorney General has repeatedly used section 63(12) to secure relief for persons who are not consumers in cases that are not consumer protection actions").

Defendants cite to the trial court decision People v Domino's Pizza, Inc., NY Slip Op 30015(U) (Sup Ct, NY County 2021), which is not binding on this Court, as authority for the proposition that any relief sought here should come in the form of private contract litigation, not "a law enforcement action under a statute designed to address public harm." NYSCEF Doc. No. 835 at 39. However, Domino's is wholly distinguishable from the instant case. There, the Court found that "OAG did not establish that Domino's representations to franchisees... were false, deceptive, or misleading. Accordingly, the Court concludes that OAG has not established that Domino's engaged in conduct that 'tends to deceive or creates an atmosphere conducive to fraud.'" Domino's at 26[2]. Here, as discussed *infra*, OAG demonstrates that defendants repeatedly submitted fraudulent financial documents to obtain financial benefits which otherwise they would not have received.

Defendants glaringly misrepresent the requirements of an Executive Law § 63(12) cause of action. Citing to People v Northern Leasing Sys., Inc., 70 Misc 3d 256, 267 (Sup Ct, NY County 2021), defendants assert that OAG must show "the practice is one likely to mislead a reasonable consumer acting reasonably under the circumstances." NYSCEF Doc. No. 835 at 42. However, the word "consumer" does not appear anywhere in the referenced decision, and defendants' characterization of its holding is inaccurate[3]. Northern Leasing confirms that the "test for fraud under Executive Law § 63(12) is whether an act tends to deceive or creates an environment conducive to fraud." Northern Leasing at 267 (further holding "Executive Law § 63(12) expands fraud to encompass new liability, while including non-statutory fraud claims" and finding that "[a] claim under Executive Law § 63(12) is the exercise of 'the State's regulation of businesses within its borders in the interest of securing an honest marketplace'").

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[2] As the failure to demonstrate false misrepresentations foreclosed the possibility of liability on that issue in Domino's, any commentary about the statute's requirements was pure *dicta*.

[3] Although "consumer" does appear in the First Department's affirmance of Northern Leasing, it does not advance defendants' proposition that Executive Law § 63(12) actions be consumer oriented; it simply reaffirms that "the test for fraud is whether the targeted act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." 193 AD3d 67 (1st Dept 2021). The fact that Northern Leasing challenged actions targeted at consumers does not mean that Executive Law § 63(12) is restricted to such actions.

Non-Party Disclaimers

Defendants, yet again, argue that OAG's complaint must be dismissed because the SFCs contain language, provided by non-party accountants Mazars, that indicate that they have not audited or reviewed the accompanying financial statements and therefore cannot express an opinion as to whether the financial statements comply with Generally Accepted Accounting Principles ("GAAP"). However, as this Court already ruled, these non-party disclaimers do not insulate defendants from liability, as they plainly state that "Donald J. Trump is responsible for the preparation and fair presentation of the financial statement in accordance with accounting principles generally accepted in the United States of America and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the financial statement." NYSCEF Doc. No. 183.

As this Court explained in its November 3, 2022 Decision and Order: "[t]he law is abundantly clear that" using a disclaimer as a defense to a justifiable reliance claim requires proof that: "(1) the disclaimer is made sufficiently specific to the particular type of fact misrepresented or undisclosed; and (2) the alleged misrepresentations or omissions did not concern facts peculiarly within the [defendant's] knowledge." Basis Yield Alpha Fund (Master) v Goldman Sachs Grp., Inc., 115 AD3d 128, 137 (1st Dept 2014) ("a [plaintiff] may not be precluded from claiming reliance on misrepresentation of facts peculiarly within the [defendant's] knowledge"); People v Bull Inv. Grp., Inc., 46 AD2d 25, 29 (3d Dept 1974) ("It has been stated that '[t]he rule is clear that where one party to a transaction has superior knowledge, or means of knowledge not open to both parties alike, he is under a legal obligation to speak and his silence constitutes fraud"). As the SFCs did not particularize the type of fact misrepresented or undisclosed and were unquestionably based on information peculiarly within defendants' knowledge, defendants may not rely on such purported disclaimers as a defense.

In sum, the Mazars disclaimers put the onus for accuracy squarely on defendants' shoulders.

Scienter and "Participation" Requirements

Defendants erroneously claim that Fletcher v Dakota, Inc, 99 AD3d 43, 49 (1st Dept 2012), stands for the proposition that the purported "participation element [of a cause of action under Executive Law § 63(12)] is satisfied where the defendant 'directed, controlled, or ratified the decision that led to plaintiff's injury.'" However, Fletcher is not an Executive Law § 63(12) action, it was brought as a corporate tort; accordingly, is not relevant here.[4] Executive Law § 63(12) is much more than a mere codification of common law fraud.

Defendants also incorrectly rely on Abrahami v UPC Const. Co., 224 AD2d 231, 233 (1st Dept 1996), for the proposition that "[m]erely providing copies of purportedly false financial statements is insufficient." NYSCEF Doc. No. 835 at 55. However, as Abrahami was not brought pursuant to Executive Law § 63(12), its analysis regarding "intent to deceive" is irrelevant. Unlike the situation in Abrahami, where an action is brought pursuant to Executive

[4] In fact, had defendants not cut off the beginning of the sentence they cited, it would be evident on its face that such case is legally irrelevant, as the full sentence reads: "A leading treatise on corporations states that a director may be held individually liable to third parties for a corporate tort if he either participated in the tort or else 'directed, controlled, approved or ratified the decision that led to the plaintiff's injury.'" Fletcher at 49.

Law § 63(12), "good faith or lack of fraudulent intent is not in issue." People v Interstate Tractor Trailer Training, Inc., 66 Misc 2d 678, 682 (Sup Ct, NY County 1971) (holding liability under Executive Law § 63(12) does not require demonstrating an "intent to defraud"); Trump Entrepreneur Initiative at 417 ("fraud under section 63(12) may be established without proof of scienter or reliance"); Bull Inv. Grp. at 27 ("[i]t is well-settled that the definition of fraud under subdivision 12 of section 63 of the Executive Law is extremely broad and proof of scienter is not necessary").

Disgorgement of Profits

In flagrant disregard of prior orders of this Court *and* the First Department, defendants repeat the untenable notion that "disgorgement is unavailable as a matter of law" in Executive Law § 63(12) actions. NYSCEF Doc. No. 835 at 70. This is patently false, as defendants are, or certainly should be, aware that the Appellate Division, First Department made it clear *in this very case* that "[w]e have already held that the failure to allege losses does not require dismissal of a claim for disgorgement under Executive Law § 63(12)." Trump, 217 AD3d at 610.

Defendants nonetheless rely on the trial court decision in People v Direct Revenue, LLC, 19 Misc 3d 1124(A) (Sup Ct, NY County 2008), for the proposition that Executive Law § 63(12) "do[es] no[t] authorize the general disgorgement of profits received from sources other than the public." NYSCEF Doc. No. 835 at 71-72. However, defendants' neglect to mention that Direct Revenue was superseded, and essentially overruled, in 2016 by the New York Court of Appeals in People v Greenberg, which unequivocally held that "disgorgement is an available remedy under the Martin Act and the Executive Law." People v Greenberg, 27 NY3d 490, 497 (2016).

Also fatally flawed is defendants' reliance on People v Frink Am., Inc., 2 AD3d 1379, 1380 (4th Dept 2003), as it relies on the outdated proposition that Executive Law § 63(12) "does not create any new causes of action" and thus, the remedy of disgorgement is unavailable. NYSCEF Doc. No. 835 at 73-74. However, in Trump Entrepreneur Initiative, in which at least three of the instant defendants were parties, the First Department unambiguously declared that "the Attorney General is, in fact, authorized to bring a cause of action for fraud under Executive Law § 63(12)." Trump Entrepreneur Initiative at 418; see also People v Pharmacia Corp., 27 Misc 3d 368, 373 (Sup Ct, NY County 2010) (holding "Executive Law § 63(12) applies to fraudulent conduct actionable at common law, as well as to conduct for which liability arises solely from the statute").

Defendants incorrectly posit that, under People v Ernst & Young, LLP, 114 AD3d 569 (1st Dept 2014), disgorgement is available under the Martin Act but not under Executive Law § 63(12). NYSCEF Doc. No. 836 at 73. This is simply untrue. In Ernst & Young, the First Department specifically held that disgorgement was an available and potentially "crucial" remedy in an Executive Law § 63(12) action. Ernst & Young at 570.

Defendants correctly assert that "the record is devoid of any evidence of default, breach, late payment, or any complaint of harm" and argue that as none of the recipients of the subject SFCs ever lodged a complaint with OAG or otherwise claimed damages, disgorgement of profits would be inappropriate. NYSCEF Doc. No. 835 at 40.

However, that is completely irrelevant. As the Ernst & Young Court noted:

> [W]here, as here, there is a claim based on fraudulent activity, disgorgement may be available as an equitable remedy, notwithstanding the absence of loss to individuals or independent claims for restitution. Disgorgement is distinct from the remedy of restitution because it focuses on the gain to the wrongdoer as opposed to the loss to the victim. Thus, disgorgement aims to deter wrongdoing by preventing the wrongdoer from retaining ill-gotten gains from fraudulent conduct. Accordingly, the remedy of disgorgement does not require a showing or allegation of direct losses to consumers or the public; the source of the ill-gotten gains is "immaterial."

Id. (disgorgement is not impermissible penalty "since the wrongdoer who is deprived of an illicit gain is ideally left in the position he would have been had there been no misconduct") (internal citations omitted); see also Amazon.com at 130 ("Executive Law § 63(12) authorizes the Attorney General to seek injunctive and other relief", and finding "the Attorney General can seek disgorgement of profits on the State's behalf").

Sanctionable Conduct for Frivolous Motion Practice

In response to both OAG's request for a preliminary injunction and to defendants' motions to dismiss, this Court rejected every one of the aforementioned arguments. In rejecting such arguments for the second time, this Court cautioned that "sophisticated counsel should have known better." [5] NYSCEF Doc. No. 453 at 5. However, the Court declined to impose sanctions, believing it had "made its point." Id.

Apparently, the point was not received.

One would not know from reading defendants' papers that this Court has already *twice* ruled against these arguments, called them frivolous, and *twice* been affirmed by the First Department.

"In its discretion, a court may award costs and financial sanctions against an attorney or party resulting from frivolous conduct." Kamen v Diaz-Kamen, 40 AD3d 937, 937 (2d Dept 2007). See Yan v Klein, 35 AD3d 729, 729–30 (2d Dept 2006) ("The plaintiff, following two prior actions, has 'continued to press the same patently meritless claims,' most of which are now barred by the doctrines of res judicata and collateral estoppel").

Defendants' conduct in reiterating these frivolous arguments is egregious. We are way beyond the point of "sophisticated counsel should have known better"; we are at the point of intentional and blatant disregard of controlling authority and law of the case. This Court emphatically rejected these arguments, as did the First Department. Defendants' repetition of them here is indefensible.

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5 The Court even went so far as to caution that the "arguments were borderline frivolous even the first time defendants made them." NYSCEF Doc. No. 453 at 3.

Pursuant to New York Administrative Code § 130-1.1, "[t]he Court, as appropriate, may make such an award of costs or impose such financial sanctions against either an attorney or a party to the litigation or against both." The provision further states that:

> For purposes of this Part, conduct is frivolous if:
>
> (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
>
> (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
>
> (3) it asserts material factual statements that are false.

22 NYCRR 130-1.1(c). Defendants' inscrutable persistence in re-presenting these arguments clearly satisfies the first of these three possible criteria.

When considering imposing sanctions "[a]mong the factors [the court] is directed to consider is whether the conduct was continued when it became apparent, or should have become apparent, that the conduct was frivolous, or when such was brought to the attention of the parties or to counsel." Levy v Carol Mgmt. Corp., 260 AD2d 27, 34 (1st Dept 1999) (further finding that sanctions both "punish past conduct" and "they are goal oriented, in that they are useful in deterring future frivolous conduct").

In its January 6, 2023 Decision and Order, this Court warned defendants that their "reiteration of [these previously rejected arguments] scattered across five different motions to dismis[s] was frivolous." NYSCEF Doc. No. 453 at 3.

In a last-ditch attempt to stave off sanctions, defendants have submitted an affirmation by the Hon. Leonard B. Austin (ret.), who had a supremely distinguished judicial career, culminating in 12 years on the Appellate Division, Second Department. NYSCEF Doc. No. 1449. Justice Austin presents what is essentially a primer on the interplay between motions to dismiss and motions for summary judgment, and every point of law is valid.

However, it is wholly invalid as a reason for this Court to deny sanctions. First, legal arguments are for counsel to make, not for experts to submit. "The rule prohibiting experts from providing their legal opinions or conclusions is 'so well-established that it is often deemed a basic premise or assumption of evidence law—a kind of axiomatic principle.'" In re Initial Pub. Offering Sec. Litig., 174 F Supp 2d 61, 64 (SD NY 2001) (citing Thomas Baker, The Impropriety of Expert Witness Testimony on the Law, 40 U Kan LRev 325, 352 (1992) (precluding "expert affidavits" on the law); accord, Note, Expert Legal Testimony, 97 Harv LRev 797, 797 (1984) ("it remains black-letter law that expert legal testimony is not permissible"). Neither defendants nor Justice Austin has sought permission to file an amicus brief. In their own submissions, defendants have expounded on the law of capacity, standing, disclaimers, motions to dismiss, motions for summary judgment, and sanctions. The heft and prestige of a legal lion adds nothing.

More importantly, the subject affirmation utterly fails to fit the specific facts of this case into the general principles it enunciates. In many situations, discovery, and a complete record, and the reversal of the burden of proof, will turn the tide, requiring that a valid complaint be dismissed because there is no evidence to support it. But standing and capacity are legal questions, not factual issues. Crucially, while defendants have, by their own account, conducted extensive discovery and have created a complete record, they fail to point to a single fact that discovery has uncovered, let alone a single fact in the record, that changes the calculus of their denied and doomed capacity and standing arguments.

Capacity and standing are not esoteric concepts. Infants, legally declared incompetents, and persons under certain legal disabilities are not allowed to sue. The New York Attorney General is none of the above. If my sibling or neighbor is harmed, I do not have standing to sue for his or her injury. Citizens may not sue to prevent governmental actions unless they may suffer some personal harm. Executive Law § 63(12) was promulgated to give the Attorney General standing to sue on behalf of the people of New York to prevent or deter the precise type of fraud here at issue. Arguments to the contrary are risible.

Defendants' arguments that the factual record developed in discovery changed the landscape under which standing should be viewed is legally preposterous. The best that defendants could muster at oral argument was to contend (incorrectly) that plaintiff cannot sue because the subject transactions were between private entities, and nobody lost money. However, that is purely an argument on the merits, not an argument on standing. Taken to its logical extreme, absolutely any time a defendant denies liability, it could move to dismiss on the ground of lack of standing.

Exacerbating defendants' obstreperous conduct is their continued reliance on bogus arguments, in papers and oral argument. In defendants' world: rent regulated apartments are worth the same as unregulated apartments; restricted land is worth the same as unrestricted land; restrictions can evaporate into thin air; a disclaimer by one party casting responsibility on another party exonerates the other party's lies; the Attorney General of the State of New York does not have capacity to sue or standing to sue (never mind all those cases where the Attorney General has sued successfully) under a statute expressly designed to provide that right; all illegal acts are untimely if they stem from one untimely act; and square footage subjective.

That is a fantasy world, not the real world.

There is also a larger context to the sanctions issue. Several defendants are no strangers to sanctions and why courts are sometimes constrained to issue them. In the investigatory special proceeding this Court found Donald Trump in contempt of Court and sanctioned him $10,000 per day for failing to comply with his discovery obligations. This Court lifted the contempt after 11 days. The First Department affirmed the contempt and the fines. People v Trump, 213 AD3d 503, 504 (1st Dept 2023) ("[T]he financial sanction to compel compliance was a proper exercise of the court's discretionary power and was not excessive or otherwise improper, under the particular circumstances").

In Donald J. Trump v Hillary R. Clinton, 22-14102-CV-DMM, ("Order on Motion for Indicative Ruling") (filed September 15, 2023) (SD FL), Judge Donald M. Middlebrooks denied what in

New York legal parlance would be called "a motion to reargue," pursuant to which Donald Trump asked Judge Middlebrooks to vacate sanctions imposed on him and his legal team totaling close to one million dollars. Judge Middlebrooks wrote, on the first page thereof, that "Movants acted in bad faith in bringing this lawsuit and that this case exemplifies Mr. Trump's history of abusing the judicial process.[6]" Id.

Unfortunately, sanctions are the only way to impress upon defendants' attorneys the consequences of engaging in repetitive, frivolous motion practice after this Court, affirmed by the Appellate Division, expressly warned them against doing so. Boye v Rubin & Bailin, LLP, 152 AD3d 1, 11 (1st Dept 2017) ("sanctions serve to deter future frivolous conduct" and their "goals include preventing the waste of judicial resources, and deterring vexatious litigation and dilatory or malicious litigation tactics").

It is of no consequence whether the arguments were made at the direction of the clients or *sua sponte* by the attorneys; counsel are "ethically obligated to withdraw any baseless and false claims, if not upon [their] own review of the record, certainly by the time [the] Supreme Court advised [them] of this fact." Boye at 11 (upholding sanctions against attorneys because "counsel continued to... pursue claims which were completely without merit in law or fact."); see also Nachbaur v Am. Transit Ins. Co., 300 AD2d 74, 75 (1st Dept 2002) (motion court properly sanctioned attorneys for "repetitive and meritless motions"); Leventritt v Eckstein, 206 AD2d 313, 314 (1st Dept 1994) (affirming sanctions imposed on attorney for "repeated pattern of frivolous conduct"); William Stockler & Co. v Heller, 189 AD2d 601, 603 (1st Dept 1993) (affirming sanctions against attorney upon finding "there was no factual or legal basis for defendant's original cross motion, or for the reargument motion, that both motions were 'totally frivolous' and were submitted 'just really to delay'"). Counsel should be the first line of defense against frivolous litigation.

Accordingly, this Court grants OAG's motion for sanctions, in part, to the extent of sanctioning each of defendants' attorneys who signed their names to the instant legal briefs[7], in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Order.

Arguments Defendants Raise for the First Time

Summary Judgment Standard

To prevail on its motion for summary judgment on all causes of action, defendants must first "make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient

[6] One factor Judge Middlebrooks considered was Donald Trump's "disregard for legal principles and precedent." Id. at 14. In short, Donald Trump, and his lawyers, are not sanctions neophytes. This is not their first rodeo.

[7] The following attorneys signed their names to defendants' instant briefs and are, accordingly, sanctioned $7,500 each: Michael Madaio, Esq. (Habba Madaio & Associates, LLP); Clifford S. Robert, Esq. (Robert & Robert PLLC); Michael Farina Esq. (Robert & Robert PLLC); Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC); and Armen Morian (Morian Law PLLC).

evidence to eliminate any material issues of fact from the case." Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 (1985). "Failure [of the movant] to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers." Id. If the defendants make out their prima facie showing, the burden then shifts to plaintiff to offer evidence sufficient to rebut that showing by identifying disputed issues of fact that should go before a trier of fact.

Defendants strenuously argue throughout their briefs that OAG has not met her burden sufficient to defeat defendants' motion for summary judgment. However, defendants misstate the black letter law applicable to summary judgment, citing to City Dental Servs., P.C. v New York Cent. Mut., 34 Misc 3d 127(A) (App Term 2d, 11th, 13th Jud Dists 2011) for the flatly wrong proposition that "in order to defeat summary judgment on these claims of predicate illegality, the NYAG must, with respect to each predicate illegality attached, 'establish[] each element of its cause with respect to those causes of action.'" NYSCEF Doc. No. 835 at 62.

Not only does City Dental not stand for that proposition (it merely found that under the circumstances of that case, plaintiff's evidence failed to meet her burden on summary judgment), but the law is well-settled that "to defeat a motion for summary judgment the opposing party must 'show facts sufficient to require a trial of any issue of fact," not make out its own case. Zuckerman v City of New York, 49 NY2d 557, 562 (1980). While OAG must establish each and every element of its cause(s) of action in order to *prevail* on its own motion for summary judgment, in order to defeat defendants' motion for summary judgment (provided defendants are able to demonstrate a prima facie case) "an opposing party must 'show facts sufficient to require a trial of any issue of fact.'" Guzman v Strab Const. Corp., 228 AD2d 645, 646 (2d Dept 1996) ("evidentiary facts derived from the documents submitted [in opposition to summary judgment motion] are sufficient to present a triable issue of fact").

The "Worthless Clause"

Defendants rely on what they call a "worthless clause" set forth in the SFCs under the section entitled "Basis of Presentation" that reads, as here pertinent, as follows:

> Assets are stated at their estimated current values and liabilities at their estimated current amounts using various valuation methods. Such valuation methods include, but are not limited to, the use of appraisals, capitalization of anticipated earnings, recent sales and offers, and estimates of current values as determined by Mr. Trump in conjunction with his associates and, in some instances, outside professionals. Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates presented herein are not necessarily indicative of the amount that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts.

NYSCEF Doc. Nos. 769 at 7; 770 at 7; 771 at 7; 772 at 7; 773 at 7.

In his sworn deposition, Donald Trump spent a lot of time invoking this clause: "Well, they call it a 'disclaimer.' They call it 'worthless clause' too, because it makes the statement 'worthless.'" NYSCEF Doc. No. 859 at 67. Donald Trump goes on to say that "I have a clause in there that says, don't believe the statement, go out and do your own work. This statement is 'worthless.' It means nothing." Id. at 68. Furthermore, Donald Trump implies that he did not consider it important to review the SFCs for accuracy because of the existence of this purported "worthless clause":

> OAG: Does this refresh your recollection of the process whereby you would get final review of the Statement of Financial Condition?
>
> DJT: Yeah, I think generally. It's interesting. I would say as years went by, I got less and less and then once I became President, I would – if I saw it at all, I'd see it, you know, after it was already done.
>
> OAG: So in the period –
>
> DJT: Again, you know, I hate to be boring and tell you this. When you have the worthless clause on a piece of paper and the first – literally the first page you're reading about how this is a worthless statement from the standpoint of your using it as a bank or whatever –whoever may be using it, you tend not to get overly excited about it. I think it had very little impact, if any impact on the banks.
>
> ....
>
> OAG: So am I understanding that you didn't particularly care about what was in the Statement of Financial Condition?
>
> DJT: I didn't get involved in it very much. I felt it was a meaningless document, other than it was almost a list of my properties, with good faith effort of people trying to put some value down. It was a good faith effort.

Id. at 107-108. Defendants further submit the affidavit and deposition transcript of Robert Unell, who purports to be an expert in commercial real estate, for the proposition that because of "the worthless clause" in the SFC, "no lender relies on these for what it is." NYSCEF Doc. Nos. 1030 at 183-184; 1031.

However, defendants' reliance on these "worthless" disclaimers is worthless. The clause does not use the words "worthless" or "useless" or "ignore" or "disregard" or any similar words. It does not say, "the values herein are what I think the properties will be worth in ten or more years." Indeed, the quoted language uses the word "current" no less than five times, and the word "future" zero times.

Additionally, as discussed *supra*, a defendant may not rely on a disclaimer for misrepresentation of facts peculiarly within the defendant's knowledge. Basis Yield Alpha Fund at 136. Here, as the valuations of the subject properties are, obviously, peculiarly within defendants' knowledge, their reliance on them is to no avail.

Furthermore, "[t]his 'special facts doctrine' applies *regardless of the level of sophistication of the parties*." TIAA Glob. Invs. LLC v One Astoria Square LLC, 127 AD3d 75, 87 (1st Dept 2015) (emphasis added) (holding disclaimer does not bar liability for fraud where facts were peculiarly within disclaiming party's knowledge).

Thus, the "worthless clause" does not say what defendants say it says, does not rise to the level of an enforceable disclaimer, and cannot be used to insulate fraud as to facts peculiarly within defendants' knowledge, even vis-à-vis sophisticated recipients.

The Tolling Agreement

The First Department has declared that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and claims against defendants not subject to the tolling agreement are timely if they accrued after February 6, 2016. Trump, 217 AD3d at 611. Defendants concede that the tolling agreement binds each of the LLC-defendants and the Trump Organization. However, they argue that each of the individual defendants and the Donald J. Trump Revocable Trust (the "DJT Revocable Trust") are not bound by the agreement.

Alan Garten, the Trump Organization's Chief Legal Officer, originally entered into the tolling agreement on behalf of "the Trump Organization" on August 27, 2021; the agreement was extended one time by an amendment dated May 3, 2022. NYSCEF Doc. No. 1260. It tolls the statute of limitations for the period from November 5, 2020, through May 31, 2022. Id. at 2. The agreement contains a footnote to the entity "the Trump Organization" that reads as follows:

> As noted in the December 7, 2019 subpoena issued in this investigation to the Trump Organization, the "Trump Organization" as used herein includes The Trump Organization, Inc; DJT Holdings LLC; DJT Holdings Managing Member LLC; and any predecessors, successors, present or former parents, subsidiaries, and affiliates, whether direct or indirect; and all directors, officers, partners, employees, agents, contractors, consultants, representatives, and attorneys of the foregoing, and any other Persons associated with or acting on behalf of the foregoing, or acting on behalf of any predecessors, successors, or affiliates of the foregoing.

Id. at 4 n 1.

Thus, the tolling agreement at issue here binds "all directors [and] officers" and "present or former parents" of the Trump Organization and its affiliates and subsidiaries. Id. It is undisputed that at the time the tolling agreement was executed, each individual defendant, Donald J. Trump, Donald Trump Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney,

were all directors and/or officers of the Trump Organization. NYSCEF Doc. No. 1293 at ¶¶ 673, 680, 696, 710, 736.

Defendants argue that the non-signatory defendants are not bound by the agreement, citing Highland Crusader Offshore Partners, L.P. v Targeted Delivery Techs. Holdings, Ltd., 184 AD3d 116, 121 (1st Dept 2020), for the "general principal that only the parties to a contract are bound by its terms." NYSCEF Doc. No. 835 at 27. However, defendants fail to quote the following sentence, which provides that "[a] non-signatory may be bound by a contract under certain limited circumstances." Highland at 122. See also Oberon Sec., LLC v Titanic Ent. Holdings LLC, 198 AD3d 602, 603 (1st Dept 2021) (non-signatory companies bound by agreement with language defining signatory to include "all subsidiaries, affiliates, [and] successors").

In People v JUUL Labs, Inc., 212 AD3d 414, 417 (1st Dept 2023), in a case involving nearly identical language in a corporate tolling agreement[8], the First Department recently held that non-signatory corporate affiliates, officers, and directors were bound by the agreement. Similarly, here all the individual defendants are bound by the instant tolling agreement's terms and may be held liable for any claims that accrued after July 13, 2014.

Defendants argue that OAG is judicially estopped from asserting that the agreement binds the individual defendants based on statements OAG's counsel made during oral argument in the investigatory special proceeding. NYSCEF Doc. No. 1292 at 26. Specifically, on April 25, 2022, while seeking to hold Donald Trump in contempt for failing to comply with court orders, OAG's counsel stated: "[t]here is hard prejudice because Donald Trump is not a party to the tolling agreement, that tolling agreement only applies to the Trump Organization." NYSCEF Doc. No. 1041 at 59.

For judicial estoppel to be applicable: "First, the party against whom the estoppel is asserted must have argued an inconsistent position in a prior proceeding; and second, the prior inconsistent position must have been adopted by the court in some manner." Bates v Long Island R. Co., 997 F2d 1028, 1038 (2d Cir 1993).

Defendants are correct that the first prong is satisfied, in that the statements OAG's counsel made during oral argument are inconsistent with the position OAG is now taking. However, defendants cannot demonstrate that this Court adopted the prior position. Indeed, this Court did not need to, and did not, consider the tolling agreement when it issued its April 26, 2022 Decision and Order finding Donald Trump in contempt. See Ghatani v AGH Realty, LLC, 181 AD3d 909, 911 (2d Dept 2020) ("For the doctrine [of judicial estoppel] to apply, there must be a final determination endorsing the party's inconsistent position in the prior proceeding").

This Court has not addressed the tolling agreement until now. Accordingly, defendants cannot demonstrate that this Court adopted OAG's prior inconsistent position.

[8] The substantially similar tolling agreement at issue in Juul can be found under Index No. 452168/2019, NYSCEF Doc. No. 176.

Moreover, "[t]he party asserting estoppel must show with respect to himself: '(1) lack of knowledge of the true facts; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change in his position.'" BWA Corp. v Alltrans Exp. U.S.A., Inc., 112 AD2d 850, 853 (1st Dept 1985). Here, none of the defendants claim that they changed their positions or courses of conduct in reliance upon the statement of OAG's counsel during oral argument.

Finally, while judicial estoppel may be applied to prohibit inconsistent changes in factual positions, courts have declined to extend the doctrine to changes in legal positions. Seneca Nation of Indians v New York, 26 F Supp 2d 555, 565 (WD NY 1998), affd, 178 F3d 95 (2d Cir 1999) (finding "[t]here is no legal authority" for "broadening of the doctrine" to "include seemingly inconsistent legal positions"). Who physically signed the agreement is a question of fact; whom it binds is a question of law.

Defendants' argument that the DJT Revocable Trust is not bound by the tolling agreement falls flat. In his deposition, Donald Trump affirmed under oath that the assets of the Trump Organization are held in the DJT Revocable Trust, for which he is the sole donor and beneficiary. NYSCEF Doc. No. 859 at 21. Donald Trump also affirmed that at the time the trust was formed, he was the sole trustee and remained the sole trustee until 2017, when defendants Allen Weisselberg and Donald Trump, Jr. became the sole trustees. Id. at 20-24.

As every beneficiary, donor, and trustee of the DJT Revocable Trust is a defendant bound by the tolling agreement, and as the trust is unquestionably a "parent" of the Trump Organization, so too does the tolling agreement bind the DJT Revocable Trust. See People v Leasing Expenses Co. LLC, 199 AD3d 521, 522 (1st Dept 2021) ("It may likewise be inferred that the trustees had knowledge of the activities of the businesses they controlled through the trust mechanism. Hence, under Executive Law § 63(12), the family trusts and trustees may likewise be held liable for the fraud"); see e.g., Kurzman v Graham, 12 Misc 3d 586, 590 (Sup Ct, NY County 2006) ("courts will not allow the owner of assets to evade creditors by placing the property in a trust while retaining a right to revoke the trust").

Defendants cite to New York Estates, Powers and Trust Law § 11-1.1(b)(17) for the proposition that only a trustee may bind a trust to an agreement. However, § 11-1.1(b)(17) does not state this; rather, it states:

> (b) In the absence of contrary or limiting provisions in the court order or decree appointing a fiduciary, or in a subsequent order or decree, or in the will, deed or other instrument, every fiduciary is authorized:
>
> ...
>
> (17) To execute and deliver agreements, assignments, bills of sale, contracts, deeds, notes, receipts and any other instrument necessary or appropriate for the administration of the estate or trust.

This provision simply says what a fiduciary is permitted to do in the absence of a contrary provision. It does nothing to advance defendants' argument that *only* a trustee may bind a trust,

particularly since defendants fail to cite to any provision of the DJT Revocable Trust restricting who can bind it, as § 11-1.1(b)(17) anticipates.

Moreover, Korn v Korn, 206 AD3d 529, 530 (1st Dept 2022), upon which defendants inexplicably rely, is irrelevant to the instant analysis, as that case involved an examination by the court as to whether a fiduciary had a right or duty to negotiate on behalf of an estate pursuant to § 11-1.1(b)(13), not pursuant to § 11-1.1(b)(17), to which defendants cite.

Finally, "the Attorney General should not be limited, in [her] duty to protect the public interest, by an... agreement [s]he did not join." People v Coventry First LLC, 13 NY3d 108, 114 (2009) (holding Attorney General not bound by arbitration agreement when pursuing Executive Law § 63(12) claim and finding "[s]uch an arrangement between private parties cannot alter the Attorney General's statutory role or the remedies that [s]he is empowered to seek").

The tolling agreement was a mutually beneficial and common arrangement pursuant to which OAG agreed to hold off suing, and Alan Garten, on behalf of the Trump Organization, agreed to toll the statute of limitations. All defendants received the benefit of the bargain; OAG held off suing. OAG is entitled to its benefit of the bargain, the tolling of the statute of limitations, for the limited agreed-upon time, as against anyone it could have sued for the matters at issue at the time at which the agreement was executed. OAG clearly did not intend to permit defendants' principals to evade the tolling agreement based on a technicality contrary to the spirit of the agreement and controlling caselaw.

Statute of Limitations

As a general rule, statutes of limitation start running when a claim accrues, that is, when it can be sued upon. In arguing that OAG's causes of action are untimely, defendants incorrectly assert that the statute of limitations starts running on the date the parties entered into the subject agreements, or when the loans closed. However, the First Department did not use the word "closed," it used the word "completed." Trump, 217 AD3d at 611. Obviously, the transactions were not "completed" while the defendants were still obligated to, and did, annually submit current SFCs to comply with the terms of the loan agreements.

Defendants further assert that any continuing documentation provided after the agreements were entered into, or when the loans closed, is of no consequence if the proceeds were distributed prior to July 2014. NYSCEF Doc. No. 835 at 18. This argument is unavailing. As OAG asserts, each submission of an SFC after July 13, 2014, constituted a separate fraudulent act. Indeed, each submission of a financial document to a third-party lender or insurer would "requir[e] a separate exercise of judgment and authority," triggering a new claim. Yin Shin Leung Charitable Found. v Seng, 177 AD3d 463, 464 (1st Dept 2019) (finding continuous series of wrongs each of which gave rise to its own claim).

Defendants mistakenly assert that if a loan agreement was entered into and its proceeds were dispersed prior to the applicable statute of limitations, then a claim arising out of submitting any subsequent contractually required financial documentation is also untimely, irrespective of when that documentation is submitted. Defendants would have this Court apply a bizarre, invented, inverted form of the "relation back" doctrine, pursuant to which if one aspect of fraudulent

business conduct falls outside the statute of limitations, then all subsequent aspects of fraudulent conduct also fall outside the statute, no matter how inextricably intertwined.

Of course, this is contrary to controlling case law, which holds that a cause of action accrues at the time "when one misrepresents a material fact." Graubard Mollen Dannett & Horowitz v Moskovitz, 86 NY2d 112, 12 (1995). Moreover, even the plain language of Executive Law § 63(12) states: "[t]he term 'repeated' as used herein shall include repetition of any *separate and distinct fraudulent or illegal act*" (emphasis added). Clearly, the submission of each separate fraudulent SFC is a distinct fraudulent act.

OAG is not challenging the loans, the closings, or the disbursements; it is challenging defendants' submissions of financial documents containing false and misleading information. Thus, any SFC that was submitted after July 13, 2014, falls within the applicable statute of limitations. CW Capital Cobalt VR Ltd. v CW Capital Invs., LLC, 195 AD3d 12, 19-20 (1st Dept 2021) (each instance of wrongful conduct a "separate, actionable wrong" giving "rise to a new claim").

Materiality

It is settled that a standalone cause of action under Executive Law § 63(12) does not require a demonstration of materiality but merely that an "act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." People v Gen. Elec. Co., 302 AD2d 314, 314-315 (1st Dept 2003) (holding that, unlike GBL § 349, plaintiff need not prove "the challenged act or practice 'was misleading in a material way'").

Although the Domino's court found that "evidence regarding falsity, materiality, reliance and causation plainly is *relevant* to determining whether the Attorney General has established that the challenged conduct has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud" (Domino's at 11), every Appellate Division and the New York Court of Appeals now hold that materiality and scienter are not requirements for liability under § 63(12).

However, as discussed *infra*, although materiality is required under the second through seventh causes of action, it is not required under a standalone cause of action under Executive Law § 63(12), the OAG's first cause of action.

Defendants argue that the SFCs were not materially misleading, claiming, *inter alia* that: (1) "[t]here is no such thing as objective value"; (2) "a substantial difference between valuation in the SOFCs and appraisal, per se, is not evidence of inflated values"; (3) there is nothing improper about using "fixed assets" valuations as opposed to using the current market valuation approach; and (4) it was proper to include "internally developed intangibles, such as the brand premium used in the valuation of President Trump's golf clubs, in personal financial statements." NYSCEF Doc No. 1292 at 20-23.

Thus, defendants essentially argue that value is inherently subjective; that because internal brand valuations are in the eye of the beholder (here, Donald Trump), they cannot be overvalued. Defendants argue that "[n]o bank or underwriter would have reasonably been materially misled by the alleged misstatements or omissions in the SOFCs and other information the Defendants

made available to their counterparties because no sophisticated counterparty would have considered the SOFCs and other information provided by the Defendants alone as material to extend credit or set an interest rate, or issue an insurance policy or price a risk, without doing their own due diligence." NYSCEF Doc. No. 835 at 45.

Defendants also argue: "[i]t follows that if the user [of the SFCs] is in possession of the correct information, then the financial statements are not materially misstated." Id. at 39. Defendants' stance is, practically speaking, that they may submit false SFCs so long as the recipients know, from their own due diligence, that the information is false.

Accepting defendants' premise would require ignoring decades of controlling authority holding that financial statements and real property valuations are to be judged objectively, not subjectively. FMC Corp. v Unmack, 92 NY2d 179, 191 (1998) ("*objectively* reasonable conclusion, drawn by a competent and experience appraiser, was based on credible evidence" that demonstrated "property was overvalued") (emphasis added); Assured Guar. Mun. Corp. v DLJ Mortg. Cap. Inc., 44 Misc 3d 1206(A) (Sup Ct, NY County 2014) ("Credit Suisse is reading this as a subjective standard, dependent on Assured's expectations. Credit Suisse is wrong. It is well settled that this is an objective standard").

Moreover, courts have long found that "generally, it is the 'market value' which provides the most reliable valuation for assessment purposes." Great Atl. & Pac. Tea Co. v Kiernan, 42 NY2d 236, 239 (1977); Consol. Edison Co. of New York v City of New York, 33 AD3d 915, 916 (2d Dept 2007) ("the standard for assessment remains market value"), affd 8 NY3d 591. Beauty may be in the eye of the beholder, but value is in the eye of the marketplace.

Further, defendants' assertion that the discrepancies between their valuations and the OAG's are immaterial is nonsense. What OAG has established, in many cases by clear, indisputable documentary evidence (as discussed *infra*), is not a matter of rounding errors or reasonable experts disagreeing. OAG has submitted conclusive evidence that between 2014 and 2021, defendants overvalued the assets reported in the SFCs between 17.27-38.51%; this amounts to a discrepancy of between $812 million and $2.2 billion dollars. NYSCEF Doc. No. 766 at 70. Even in the world of high finance, this Court cannot endorse a proposition that finds a misstatement of at least $812 million dollars to be "immaterial." Defendants have failed to identify any authority for the notion that discrepancies of the magnitude demonstrated here could be considered immaterial.

The Second through Seventh Causes of Action

The Second, Third, Fourth, Fifth, Sixth, and Seventh causes of action allege violations of Executive Law § 63(12) based on underlying violations of the New York Penal Law prohibiting falsification of business records, issuance of false financial statements, and insurance fraud.

Liability under New York Penal Law § 175.05 (falsifying business records in the second degree) requires that a person "[m]akes or causes a false entry in the business records of an enterprise."

Liability under New York Penal Law § 175.45 (issuing a false financial statement) requires that a person "represents in writing that a written instrument purporting to describe a person's financial

condition or ability to pay as of a prior date is accurate with respect to such person's current financial condition or ability to pay, whereas [that person] knows it is materially inaccurate in that respect."

Liability under New York Penal Law § 176.05 (insurance fraud) requires that a person submitted an application for insurance either: (1) knowing that it "contain[ed] materially false information concerning any fact material thereto"; or (2) "conceal[ed], for the purpose of misleading, information concerning any fact material thereto."

Accordingly, unlike a standalone cause of action under Executive Law § 63(12). the second through seventh causes of action require demonstrating some component of intent and materiality. People v Alamo Rent A Car, Inc., 174 Misc 2d 501, 505 (Sup Ct, NY County 1997) ("As in all other situations requiring *mens rea*, however, petitioners may prove, by reference to facts and circumstances surrounding the case, that respondents knew that their conduct was unlawful. Moreover, petitioners need not prove respondents acted with an 'evil motive, bad purpose or corrupt design'") (internal citations omitted).

OAG has demonstrated that there remain, at the very least, disputed issues of fact as to whether defendants violated these statutes, intentionally and materially. Thus, there are issues of fact as to causes of action two through seven that require a trial.

The Court has considered defendants' remaining arguments and finds them to be unavailing and/or non-dispositive.

Accordingly, defendants' motion for summary judgment dismissing every cause of action is denied in its entirety.

OAG'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ITS FIRST CAUSE OF ACTION

Summary Judgment Burden on Standalone Executive Law § 63(12) Cause of Action

OAG moves for partial summary judgment, seeking to hold defendants liable under OAG's first cause of action, for fraud under Executive Law § 63(12).

As this Court has noted *ad nauseum*, Executive Law § 63(12) "authorizes the Attorney General to bring a special proceeding against any person or business that engages in repeated or persistent fraudulent or illegal conduct, while broadly construing the definition of fraud so as to include acts characterized as dishonest or misleading and eliminating the necessity for proof of an intent to defraud." People v Apple Health & Sports Club, Ltd., Inc., 206 AD2d 266-267 (1st Dept 1994).

As OAG's first cause of action, the only one upon which it moves for summary judgment, alleges a standalone violation of Executive Law § 63(12), OAG need only prove: (1) the SFCs were false and misleading; and (2) the defendants repeatedly or persistently used the SFCs to transact business.

This instant action is essentially a "documents case." As detailed *infra,* the documents here clearly contain fraudulent valuations that defendants used in business, satisfying OAG's burden to establish liability as a matter of law against defendants. Defendants' respond that: the documents do not say what they say; that there is no such thing as "objective" value; and that, essentially, the Court should not believe its own eyes.[9]

The defenses Donald Trump attempts to articulate in his sworn deposition are wholly without basis in law or fact. He claims that if the values of the property have gone up in the years since the SFCs were submitted, then the numbers were not inflated at that time (i.e.; "But you take the 2014 statement, if something is much more valuable now – or, I guess, we'll have to pick a date which was a little short of now. But if something is much more valuable now, then the number that I have down here is a low number"). NYSCEF Doc. No. 1363 at 69-75). He also seems to imply that the numbers cannot be inflated because he could find a "buyer from Saudi Arabia" to pay any price he suggests.[10] Id. at 30-33, 60-62, 79-80.

The Trump Tower Triplex

This Court takes judicial notice that the Trump Tower apartment in which Donald Trump resided for decades (the "Triplex") is 10,996 square feet. NYSCEF Doc. No. 816 at 2. Between 2012-2016, Donald Trump submitted SFCs falsely claiming that the Triplex was 30,000 square feet, resulting in an overvaluation of between $114-207 million dollars. NYSCEF Doc. Nos. 782 at Rows 833-834, 1028, 783 at Rows 799-800, 1199, 784 at Rows 843-844, 785 at Rows 882-883, 789 at Row 913, 817. The misrepresentation continued even after defendants received written notification from *Forbes* that Donald Trump had been overestimating the square footage of the Triplex by a factor of three.[11]

In opposition, defendants absurdly suggest that "the calculation of square footage is a subjective process that could lead to differing results or opinions based on the method employed to conduct the calculation.[12]" NYSCEF Doc. No. 1293 at 20. Well yes, perhaps, if the area is rounded or oddly shaped, it is possible measurements of square footage could come to slightly differing results due to user error. Good-faith measurements could vary by as much as 10-20%, not 200%.

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[9] As Chico Marx, playing Chicolini, says to Margaret Dumont, playing Mrs. Gloria Teasdale, in "Duck Soup," "well, who ya gonna believe, me or your own eyes?"

[10] This statement may suggest influence buying more than savvy investing.

[11] Three days after receiving a written inquiry from *Forbes*, Trump Organization Vice President, Amanda Miller, sent an email to Trump Organization Executive Vice President and Chief Legal Officer, Alan Garten, indicating that she "spoke to Allen W[eisselberg] re: [Trump World Tower and Trump Tower] – we are going to leave those alone." NYSCEF Doc. No. 821. Although OAG need not show intent to deceive under a standalone § 63(12) cause of action, this directive to continue to use a grossly inflated number despite clear knowledge it is false demonstrates the repetitive and ongoing nature of defendants' propensity to engage in fraud.

[12] Despite this assertion in their motion papers, counsel for defendants, Christopher Kise, Esq, conceded during oral argument held on September 22, 2023, that square footage is, in fact, an objective number.

A discrepancy of this order of magnitude, by a real estate developer sizing up his own living space of decades, can only be considered fraud.[13]

OAG unquestionably satisfies its two-prong burden of demonstrating the SFCs from 2012-2016 calculated the value of the Triplex based on a false and misleading square footage, and that some of the defendants repeatedly and persistently used the SFCs to transact business.

Seven Springs Estate

Defendant Seven Springs LLC owns over 200 acres of contiguous land in the towns of Bedford, New Castle and North Castle in Westchester County, New York.

In 2000, non-party the Royal Bank of Pennsylvania appraised the "as is" market value of Seven Springs to be $25 million if converted to residential development. NYSCEF Doc. No. 825. In 2006, the same bank performed a new appraisal, which showed Seven Springs had an "as is" market value of $30 million. NYSCEF Doc. No. 826.

In 2012, Seven Springs LLC received another appraisal that estimated a six-lot subdivision on the New Castle portion of the property to have a fair market value of approximately $700,000 per-lot. NYSCEF Doc. No. 829 at 203-206.

In July 2014, because the Trump Organization was considering donating a conservation easement, it retained Cushman & Wakefield to provide a "range of value" of the Seven Springs property. NYSCEF Doc. Nos. 830, 831. Cushman & Wakefield's appraiser, David McArdle, analyzed the sale of eight lots in Bedford, six lots in New Castle, and ten lots in North Castle and determined the fair market value for all 24 lots was approximately $30 million. NYSCEF Doc. No. 831, 832.

Notwithstanding receiving market values from professional appraisals in 2000, 2006, 2012, and 2014 valuing Seven Springs at or below $30 million, Donald Trump's 2011 SFC reported the value to be $261 million, and his 2012, 2013 and 2014 SFCs reported the value to be $291 million.[14] NYSCEF Doc. Nos. 769, 770, 771, 772.

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[13] In fact, OAG demonstrates that as of 2012, no apartment sold in New York City had ever approached the price at which defendants valued the Triplex, noting that the highest overall sale at that time was $88 million for a Central Park West penthouse. The SFCs valued the Triplex at a staggering $180,000,000-$327,000,000 for the years 2012-2016. NYSCEF Doc. No. 1 at ¶276.

[14] The statutes of limitations have run for all claims that accrued before July 13, 2014. However, although not actionable by themselves, evidence of fraud that predates July 13, 2014, may still be used as evidence in evaluating OAG's request for permanent injunctive relief, wherein the Court must determine whether there has been "a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d 490, 496-97 (2016) (detailing standard for permanent injunctive relief under Executive Law 63(12) and "reject[ing] defendants' arguments that the Attorney General must show irreparable harm in order to obtain a permanent injunction").

In early 2016, Cushman & Wakefield performed another appraisal of Seven Springs, which included the planned development, and determined that as of December 1, 2015, the entire parcel was worth $56.6 million. NYSCEF Doc. Nos. 824 at 9; 875; 876.

Even giving defendants the benefit of the $56.6 million figure as of December 1, 2015, the value submitted on Donald Trump's 2014 SFC was inflated by over 400%. Accordingly, OAG has demonstrated liability for the false 2014 SFC for fraudulently inflating the value of Seven Springs.

Trump Park Avenue

Trump Park Avenue is a residential building included as an asset on Donald Trump's SFCs for the years 2011-2021. NYSCEF Doc. Nos. 769-779. In 2011, 12 of the unsold residential condominium units were subject to New York City's rent regulation laws. NYSCEF Doc. No. 948 at 3. By 2014, nine units remained subject to rent restrictions. NYSCEF Doc. No. 966. By 2020, six units remained subject to rent restrictions. NYSCEF Doc. No. 971.

A 2010 appraisal performed by the Oxford Group valued the 12 rent-stabilized units at $750,000 total, or $62,500 per unit. NYSCEF Doc. No. 952. A 2020 appraisal performed by Newmark Knight Frank valued the six units that remained subject to stabilization at $22,800,090 total, or $3,800,315 per unit. NYSCEF Doc. No. 972.

Notwithstanding, for the years 2014-2021, the Trump Organization submitted SFCs that valued these rent-restricted units as if they were unencumbered, inflating the value of each unit between as much 700% (in 2014) and 64% (in 2021). NYSCEF Doc. Nos. 772-779.

In an unsuccessful attempt to rebut OAG's prima facie demonstration, defendants proffer that the units are not overvalued because "the rent-stabilized units have the potential at some point in the future to be converted into unencumbered (by rent stabilization) units."[15] NYSCEF Doc. No. 1292 at 57. They further concede that "[t]his is the assumption the owner made when assessing potential asset pricing or value." Id.

[15] As every New Yorker knows, rent regulated units may be passed on from one generation to the next in perpetuity.

However, the SFCs are required to state "current" values, not "someday, maybe" values. At the time defendants provided the subject SFCs to third parties they unquestionably falsely inflated the value of the units based on a false premise that they were unrestricted.[16]

40 Wall Street

The Trump Organization, through defendant 40 Wall Street LLC, owns a ground lease at 40 Wall Street and pays ground rent to the landowner.

In 2010, Cushman & Wakefield appraised the Trump Organization's interest in 40 Wall Street at $200 million. NYSCEF Doc. Nos. 878-79. Cushman & Wakefield appraised again in 2011 and 2012, reaching valuations of between $200 and $220 million. NYSCEF Doc. Nos. 881-82. The Trump Organization possessed and was familiar with these appraisals. NYSCEF Doc. Nos. 817 at 135-138; 883.

Despite these appraisals, the 2011 and 2012 SFCs valued the Trump Organization's interest in the property at $524.7 million and $527.2 million, respectively, an overvaluation of more than $300 million each year.[17] NYSCEF Doc. Nos. 769, 770.

In 2015, Cushman & Wakefield once again appraised the property, and valued it at $540 million.[18] NYSCEF Doc. No. 887. Notwithstanding this appraised value, the 2015 SFC listed the value of 40 Wall Street at $735.4 million.[19] NYSCEF Doc. No. 773.

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[16] Mazars accountant Donald Bender testified that when he asked Jeffrey McConney, "Do you have any other appraisals?", Jeffrey McConney stated "I have nothing else," demonstrating an intent to conceal or mislead the accountants. NYSCEF Doc. No. 1262 at 243.

Further, Patrick Birney, a Trump Organization employee working directly under Jeffrey McConney, conceded that the Trump Organization maintained a spreadsheet for day-to-day operations on the Trump Park Avenue offering plan that included both the offering plan prices *and* the current market values, but that the Trump Organization concealed its own actual market estimates from Mazars by omitting the market value column in its spreadsheet and providing Mazars with only the offering plan prices. NYSCEF Doc. No. 946.

[17] Although any liability arising out of the submission of the 2011 and 2012 SFCs is time barred; as previously discussed, these submissions may be considered as evidence in support of OAG's request for injunctive relief.

[18] OAG plausibly asserts that this $540 million is also inflated; however, for purposes of this motion, OAG does not dispute the number, and argues that, even if the Court were to accept defendants' number as accurate, the 2015 SFC was still materially false, as it stated the value as nearly $200 million more than the $540 million appraisal. NYSCEF Doc. No. 766 at n 7.

[19] An email exchange dated August 4, 2014, between Allen Weisselberg and his son, Jack Weisselberg, a Ladder Capital employee, discusses the 2015 $540 million Cushman & Wakefield appraisal. NYSCEF Doc. No. 888. Notwithstanding direct knowledge of it, the 2015 SFC valued 40 Wall Street at nearly $200 million more. NYSCEF Doc. No. 773.

Defendants assert that overvaluations of two hundred million dollars are immaterial, as the "NYAG has produced no evidence to suggest... that Ladder Capital would have been uncomfortable allowing President Trump to guarantee the 40 Wall Street Loan if his net worth was only $1.9 billion, as the NYAG contends." NYSCEF Doc. No. 835 at 48. They further emphasize that "Ladder Capital has received in excess of $40 million in interest and 40 Wall Street LLC has never defaulted under the Loan."[20] Id.

Defendants' argument misses the mark. As has been explained to defendants many times, in many legal proceedings, and in painstaking detail, "where, as here, there is a claim based on fraudulent activity [under Executive Law 63(12)], disgorgement may be available as an equitable remedy, *notwithstanding the absence of loss to individuals or independent claims for restitution.*" Ernst & Young at 569 (emphasis added). Accordingly, it is not significant that the banks made money (or did not lose money)[21], or that they would have done business with the Trump Organization notwithstanding. The law is clear that the only requirements for liability to attach under a standalone Executive Law § 63(12) cause of action are (1) a finding that the SFCs were false and misleading; and (2) that defendants repeatedly or persistently used the SFCs to conduct business.

Accordingly, OAG has demonstrated liability for the false valuation of 40 Wall Street in the 2015 SFC.

Mar-a-Lago

Donald Trump purchased Mar-a-Lago in 1985. In 1993, he sought, and obtained, permission from the Town of Palm Beach to turn the property into a social club (NYSCEF Doc. No. 900), and on August 10, 1993, he entered into a "Declaration of Use Agreement" by which he agreed "the use of Land shall be for a private social club" and that "[a]ny additional uses of the Land shall be subject to approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Landmarks Preservation Commission of the Town, the Architectural Review Commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or any agencies under the foregoing governmental authorities." NYSCEF Doc. No. 915.

In 1995, Donald Trump signed a "Deed of Conservation and Preservation Easement" in which he gave up his right to use Mar-a-Lago for any purpose other than as a social club (the "1995 Deed"). NYSCEF Doc. No. 901. In 2002, Donald Trump signed a "Deed of Development Rights." NYSCEF Doc. No. 902. As part of granting a conversation easement to the National

[20] The defendant borrowers did not default on any loans; but we only know that with hindsight. Markets are volatile, and borrowers come in all shapes and sizes. The next borrower, or the one after that, might default, and if its SFCs are false, the lender might unfairly be left holding the bag. This will distort the lending marketplace and deprive other potential borrowers of the opportunity to obtain loans and create wealth.

[21] The subject loans made the banks lots of money; but the fraudulent SFCs cost the banks lots of money. The less collateral for a loan, the riskier it is, and a first principal of loan accounting is that as risk rises, so do interest rates. Thus, accurate SFCs would have allowed the lenders to make even more money than they did.

Trust for Historic Preservation, Donald Trump agreed that "Trump intend[s] to forever extinguish [his] right to develop or use the Property for any purpose other than club use" (the "2002 Deed"). The 2002 Deed also specifically "limits changes to the Property including, without limitation, the division or subdivision of the Property for any purpose, including use as single family homes, the interior renovation of the mansion, which may be necessary and desirable for the sale of the Property as a single family residential estate, the construction of new buildings and the obstruction of open vistas." Id. In exchange for granting the easement, Mar-a-Lago was taxed at a significantly lower rate (the club rate) than it otherwise would have been (the private home rate). NYSCEF Doc. No. 903.

From 2011-2021, the Palm Beach County Assessor appraised the market value of Mar-a-Lago at between $18 million and $27.6 million. NYSCEF Doc. No. 905.

Notwithstanding, the SFCs' values do not reflect these land use restrictions. Donald Trump's SFCs for 2011-2021 value Mar-a-Lago at between $426,529,614 million and $612,110,496, an overvaluation of *at least 2,300%*, compared to the assessor's appraisal. NYSCEF Doc. Nos. 769-779.

In an attempt to rebut the OAG's demonstration, defendants rely on the opinion affidavit of Lawrence Moens, who they purport is "the most accomplished and knowledgeable ultra-high net worth real estate broker in Palm Beach, Florida."[22] Moens claims that "the SOFC were and are appropriate and indeed *conservative*." NYSCEF Doc. No. 1292 at 35-36 (emphasis added). The Moens' affidavit states in a conclusory fashion that because he believes "this unique property offers to an elite purchaser the unparalleled opportunity to own an exclusive and extensive family compound in the most desirable sections of Palm Beach... the valuations in the SOFC were reasonable and below my estimate for the market value of the property each year." NYSCEF Doc. No. 1435. Moreover, Moens opines that "[i]f Mar-A-Lago was available for sale, I am confident that in short order, I would be in a position to produce a ready, willing and able buyer who would have interest in securing the property for their personal use as a residence, or even, their own club." Id. at 29. Critically, Moens does not opine *at what price* he is "confident" he could find a buyer (although he opines separately, without relying on any objective evidence, that he believes that as of 2023 the property is worth $1.51 *billion*[23]).

It is well-settled that: "[w]here the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation, however, the opinion should be given no probative force and is insufficient to withstand summary judgment." Diaz v New York Downtown Hosp., 99 NY2d 542, 544 (2002); see also Gardner v Ethier, 173 AD2d 1002, 1003-4 (3d Dept 1991) ("the expert

[22] At oral argument, his domain of expertise was enlarged to nationwide status.

[23] In his sworn deposition, when asked "[w]ho were the dozen or so [qualified] buyers that you were referencing in your report, Lawrence Moens replied: "I could dream up anyone from Elon Musk to Bill Gates and everyone in between. Kings, emperors, heads of state. But with net worths in the multiple billions. I don't know how many people in the world have a net worth of more than $10 billion, but I think it's quite a number. There are a lot." NYSCEF Doc. No. 1428 at 184-185. Obviously, this Court cannot consider an "expert affidavit" that is based on unexplained and unsubstantiated "dream[s]."

affidavit is also inadmissible because it is conclusory and the views are apparently based to a great extent on hearsay statements from unspecified witnesses as well as upon speculations on the part of the expert"). Accordingly, defendants' reliance on the Moens affidavit is unpersuasive and certainly insufficient to rebut OAG's prima face case.

Defendants further imply that they may ignore the plain language of the 2002 Deed restrictions because they would likely be able to use the Florida judicial system to get out of their contractual requirements; they further assert that because they may successfully breach their contract in the future, they were not required to consider the restrictions of the 2002 Deed when valuing the property. NYSCEF Doc. 1292 at 48-51. This argument is wholly without merit. At the time in which the defendants submitted the SFCs, the restrictions were in effect, and any valuations represented to third-parties must have incorporated those restrictions; failure to do so is fraud. Assets values that disregard applicable legal restrictions are by definition materially false and misleading.

Accordingly, OAG has demonstrated liability for the false valuation of Mar-a-Lago as appears in the SFCs from 2014-2021.

Aberdeen

The Trump Organization owns a golf course located in Aberdeen, Scotland ("Aberdeen"). The value assigned to Aberdeen was comprised of two parts: a value for the golf course and a value for the development of the non-golf course property, the latter of which is the focus here. Developing any of the non-golf course property required that the local Scottish authorities approve any proposed plans.

From 2011-2014, Donald Trump's SFC reported that he had "received outline planning permission [from local Scottish authorities] in December 2008 for... a residential village consisting of 950 holiday homes and 500 single family residences and 36 golf villas." NYSCEF Doc. Nos. 769-776.

The Trump Organization had "outline planning permission" to build a total of 1,486 homes. Notwithstanding, the 2014-2018 SFCs valuations of Aberdeen assumed the Trump Organization had received approval to build 2,500 homes, despite never having received such approval. NYSCEF Doc. Nos. 772-776, 907.

Additionally, the approval of the 950 holiday homes and 36 golf villas came with severe restrictions on their use: they could be used solely as rental properties and could be rented for no more than 12 weeks in any calendar year. NYSCEF Doc. No. 908 at 13. The Trump Organization submitted financial documentation to the local Scottish authorities representing that these short-term rentals would not be profitable and therefore would not add any value to Aberdeen. NYSCEF Doc. Nos. 909 at 36, 910 at 7. Consequently, the only profitable development of Aberdeen would have been the 500 single family residences. In July 2017, non-party Ryden LLP, acting on behalf of the Trump Organization, prepared a development appraisal for Aberdeen wherein it assessed the profit from developing 557 homes and estimated profits in the range of £16,525,000-£18,546,000. NYSCEF Doc. No. 1231 at 10.

In May 2018, the Trump Organization applied to the Aberdeen City Council to reduce the scope of the development project to 550 dwellings, consisting of 500 private residences, 50 leisure/resorts units, and zero holiday homes (having determined they were not profitable). NYSCEF Doc. No. 911. In September 2019, the Aberdeen City Council approved the proposal for a reduction in the proposed development, but restricted the 50 leisure/resort units, as they had the holiday homes, to be "occupied on a holiday letting or fractional ownership basis only and for no other purposes whatsoever including use as a permanent residential unit... ." NYSCEF Doc. No. 907 at 7.

Notwithstanding, the 2019 SFC, finalized a month after the latest approval, derived a value based on the assumption that 2,035 private residential homes could be developed. Adjusting the values to reflect the permissible 500 private residences reduces the value of the Aberdeen undeveloped property as reflected in the 2019 SFC by £164,196.704. NYSCEF Doc. No. 777 at 16, 789 at Cells G561-619, 912.

Although defendants wholly fail to address Aberdeen in any of their three memos of law, in their response to OAG's statement of material facts, they state that "Defendants dispute the veracity of the appraisal because President Trump, as a land developer, took optimistic views of potential future value which is not contemplated in the appraisal, thereby undervaluing Trump Aberdeen." NYSCEF Doc. No. 1293 at 82-83. For all the reasons discussed *supra*, this defense fails.

Accordingly, OAG has demonstrated liability for the false valuation of Aberdeen as appears in the SFCs from 2014-2019.

US Golf Clubs

Donald Trump owns or leases a number of golf clubs across the United States and abroad that are included as assets on his SFCs. NYSCEF Doc. Nos. 769-779. The value for these golf clubs is provided in the aggregate in the SFCs, although supporting accounting spreadsheets evidence the breakdown of the values assigned to each club. NYSCEF Doc. Nos. 781-791.

The "Trump Brand Premium"

The evidence indicates that for the years 2013-2020, the SFCs relied on values that included a 15% or 30% "premium" based on the "Trump brand" for the following seven golf clubs: Trump National Golf Course ("TNGC") Jupiter, TNGC LA, TNGC Colts Neck, TNGC Philadelphia, TNGC DC, TNGC Charlotte, and TNGC Hudson Valley. NYSCEF Doc. Nos. 783-790. However, the SFCs for those years (and, indeed, all the years before this Court), also contained express language stating: "The goodwill attached to the Trump name has significant value that has *not* been reflected in the preparation of this financial statement." NYSCEF Doc. Nos. 769-779 (emphasis added). Accordingly, the SFCs "double dip," both purporting not to include a brand premium while simultaneously including one of 15% or 30%.

In opposition, defendants submit the affidavit of Eli Bartov, an accounting professor at New York University, who distinguishes between overall brand value and brand value ascribed to individual golf courses. His point, ensconced in numerous lines of academic jargon, seems to be that defendants said that they were eschewing the former and opting only for the latter. NYSCEF Doc. No. 1378 at 14-15. This is a red herring and factually incorrect. The SFCs

clearly state that they do not include a brand value for *any* of the properties included in the SFCs; indeed, the SFCs emphatically declare that "[t]he goodwill attached to the Trump name has significant financial value *that has not been reflected in the preparation of this financial statement.*" NYSCEF Doc. Nos. 769-779 (emphasis added). Perhaps Donald Trump could have ascribed a brand value to golf courses that he viewed as "special," but he was obligated to disclose those exceptions when he represented that the SFCs did not reflect his brand value.

TNGC Briarcliff and TNGC LA

The valuations of TNGC Briarcliff and TNGC LA were each comprised of a value for the golf course and a value for the undeveloped land. As the Trump Organization was considering donating a conservation easement over both properties, they had both properties appraised.

An April 2014 appraisal valued the golf club portion of TNGC Briarcliff at $16,500,000; later that same year, Donald Trump valued the golf club portion of TNGC Briarcliff at $73,430,217, *an inflation of more than 300%*, in his SFC. NYSCEF Doc. Nos. 923 at 147; 785 at Row 257. A 2015 appraisal valued the golf club portion of TNGC LA at $16,000,000 as of December 26, 2014; the 2015 SFC valued the golf club portion of TNGC LA at $56,615,895, *an inflation of more than 200%.* NYSCEF Doc. Nos. 924 at 151; 785 at Row 386.

In an attempt to rebut this strong showing of fraud, defendants argue that they were not obligated to use market value, but, instead, were permitted to use the "fixed assets" approach to valuation, pursuant to which defendants may "value" a property by aggregating the money spent to acquire and maintain a property. NYSCEF Doc. No. 1292. They further rely on the Bartov affidavit, which states, in wholly conclusory fashion that: "[t]he assertion that 'Using fixed assets approach does not present the golf clubs at their estimated current value because the approach ignores market conditions and the behavior of informed buyers and sellers' is unsubstantiated and false." NYSCEF Doc. No. 1378 at 29.

Bartov is incorrect. Each of the corresponding SFCs include representations that "[a]ssets are stated at their estimated current values..." NYSCEF Doc. Nos. 769-779.[24] Accordingly, it is false and misleading to use a fixed-assets evaluation, which is completely different. The price for which you purchase property is not necessarily the price for which you can sell it. The latter, not the former, matters to lenders who want adequate collateral.

The Membership Liabilities

As part of the purchase of several of the golf club properties, Donald Trump agreed to assume the obligation to pay back refundable non-interest-bearing long-term membership deposits. However, notwithstanding that these liabilities must be satisfied in the future, the SFCs from 2012-2021 value them at $0. NYSCEF Doc. Nos. 769-779. This is false; they are a liability in the millions of dollars.

[24] In their response to OAG's statement of material facts, defendants concede that "GAAP defines Estimated Current Value as 'the amount at which the item could be exchanged between a buyer and seller, each of whom is well informed and willing, and neither of whom is compelled to buy or sell." NYSCEF Doc No. 1293 at 17.

However, the SFCs all state: "The fact that Mr. Trump will have the use of these funds for that period without cost and that the source of repayment will most likely be a replacement membership has led him to value this liability at zero." See e.g., NYCSCEF Doc. No. 772.

Although it was false to report the membership liabilities as $0, it was not, under the circumstances, *misleading*, as the SFCs state that the reason for so doing. Accordingly, OAG cannot prevail on liability as a result of the failure to report the membership liabilities.

Yet, as discussed *supra*, OAG has demonstrated liability for submitting fraudulent SFCs in 2014-2020 that falsely value the aforementioned US Golf Clubs based on undisclosed brand premiums and failure to report "current" values.

Vornado Partnership Properties

Donald Trump has a 30% limited partnership interest with non-party Vornado Realty Trust in entities that own office buildings in New York City (at 1290 Avenue of the Americas, hereinafter "1290 AOA") and San Francisco at 555 California Street.

Cash/Liquid Classification

Donald Trump's 30% limited partnership stake does not permit him to use or withdraw funds held by the partnerships. NYSCEF Doc. Nos. 916, 917. Notwithstanding, Donald Trump and his trustees classified his 30% interest in the Vornado partnership as a liquid/cash asset on his SFCs for the years 2013-2021. NYSCEF Doc. No. 771-779. This was even though it is "undisputed" by defendants that Donald Trump does not have "the right to use or withdraw [these] funds." NYSCEF Doc. No. 1293 at ¶387-388.

Defendants assert that "[e]ven if the cash held in the partnership was misclassified and should have been reported elsewhere on the SOFCs as an asset (e.g., in the value of the partnership interest), it would not have inflated the total value of cash or President Trump's net worth reported on the SOFCs." NYSCEF Doc No. 1292 at 39.

This argument does not hold any water. Put simply, it was false and misleading for defendants to indicate that it had access to between $14,221,800 and $93,126,589 in liquid assets, sometimes nearly a third of the total cash it claimed, when in fact those assets were completely illiquid. NYSCEF Doc. No. 1293 ¶ 403.

The Appraisals

Cushman & Wakefield appraised the value of 1290 AOA at $2 billion as of November 1, 2012, and $2.3 billion as of November 1, 2016. NYSCEF Doc. No. 919 at 5-6.

However, Donald Trump's 2014 SFC calculated his 30% share based on a purported value of $3,078,338,462; his 2015 SFC was based on a purported value of $2,985,819,936; and his 2016 SFC was based on a purported value of $3,055,000,000. NYSCEF Doc. Nos. 784 at Rows 709-715, 785 at Rows 748-755, 785 at Rows 779-784. This resulted in overvaluations of Donald Trump's 30% interest in 1290 AOA of between $205-$233 million dollars for those years.

CBRE appraised 1290 AOA and determined its value at $2 billion as of October 7, 2021. NYSCEF Doc. No. 947. Nonetheless, the 2021 SFC was calculated based upon a purported value of $2,574,813,800, an overvaluation of Donald Trump's 30% share by $172 million dollars. NYSCEF Doc. No. 791 at Row 918.

The instant motions do not task this Court with determining which appraisals are the most accurate, which would present issues of fact.[25] Rather, time and time again, the Court is not comparing one appraisal to another; it is comparing an independent professional appraisal to a pie-in-the-sky dream of concocted potential.

Accordingly, OAG has demonstrated liability for submitting fraudulent SFCs overvaluing Donald Trump's interest in the Vornado partnership in 2014-2016 and 2021.

Licensing Deals

Each of Donald Trump's SFCs from 2011-2021 has an asset category entitled "Real Estate Licensing Deals," which the SFC represents is value derived from "associations with others for the purpose of developing and managing properties" and the "cash flow that is expected to be derived... from these associations as their potential is realized." NYSCEF Doc. Nos. 769-779. The SFCs further state that "[i]n preparing [these] assessment[s], Mr. Trump and his management considered only situations which have evolved to the point where signed arrangements with the other parties exist and fees and other compensation which he will earn are reasonably quantifiable." Id.

Despite this express language, the SFCs from 2014-2018 and 2020-2021 include valuations of intra-organization deals, all between entities under the Trump Organization umbrella, in this category of assets. NYSCEF Doc. Nos. 1014, 1018, 1019, 1021, 1023, 1024, 1062, 1063, 1064. It was flatly false and misleading to include values of deals between Trump Organization entities while expressly representing in the SFCs that such assets included only valuations derived from "association with others." Improperly including these intra-organization deals resulted in an overvaluation of up to $224 million in 2014, $110 million in 2015, $120 million in 2016, $113 million in 2017, $115 million in 2018, $97 million in 2020, and $106 million in 2021. Id.

OAG has demonstrated liability for the false and misleading valuation of intra-company licensing deals on the SFCs from 2014-2018 and 2020-2021.

The Other Loans

OAG has established that defendants submitted false SFCs after July 13, 2014, pursuant to their other loan commitments. Defendants submitted SFCs to Deutsche Bank as part of their contractual obligations arising out of three different loans: (1) a Chicago Loan, undertaken by 401 North Wabash Venture LLC; (2) a Doral Loan, undertaken by Trump Endeavor LLC; and (3) an Old Post Office Loan, undertaken by Trump Old Post Office LLC. Defendants certified the accuracy of these SFCs to Deutsche Bank for the years 2014-2019 and 2021[26] as part of their

[25] Nor is this Court asked to determine Donald Trump's total wealth.

[26] The gap for 2020 may have been due to the COVID-19 pandemic.

contractual obligations. NYSCEF Doc. Nos. 1097, 1098, 1099, 1100, 1102, 1104, 1106, 1124, 1126, 1155, 1156, 1157.

The Individual Defendants

OAG has demonstrated liability on behalf of all the named individual defendants: (1) **Donald Trump**, as each and every SFC was issued on behalf of "Donald J. Trump"; (2) **Donald Trump, Jr.**, who, along with Allen Weisselberg, certified the accuracy of the SFCs for 2016-2020, and who singlehandedly certified the accuracy of the 2021 SFC (NYSCEF Docs. No. 808-813); (3) **Eric Trump**, who is the listed source for the Seven Springs valuation in 2014,[27] and who signed several guarantor compliance certificates in 2020 and 2021 for Donald J. Trump (NYSCEF Doc. No. 802); (4) **Allen Weisselberg**, who certified the accuracy of the SFCs from 2014-2021 (NYSCEF Doc. Nos. 806-812); (5) and **Jeffrey McConney**, who led the process of preparing all the SFCs since the 1990s[28] (NYSCEF Doc. No. 822 at 52-68).

The Entity Defendants

It is settled law that "[a] parent corporation will not be held liable for the torts or obligations of a subsidiary *unless it can be shown that the parent exercised complete dominion and control over the subsidiary*." Potash v Port Auth. of New York & New Jersey, 279 AD2d 562, 562 (2d Dept 2001) (emphasis added). Here, it is undisputed that Donald Trump, through one corporate form or another, exercised complete control over the umbrella of entities operating in furtherance of, or on behalf of, "the Trump Organization."

Defendants do not dispute that DJT Holdings LLC and DJT Holdings Managing Member LLC are entities that sit at the top of the Trump Organization's organizational chart and together own many of the Trump-affiliated entities that comprise the Trump Organization. DJT Holdings Managing Member LLC owns 100% of the Trump Organization and DJT Holdings LLC owns 100% of the Trump Organization LLC. NYSCEF Doc. Nos. 4, 819 at ¶1.

Accordingly, OAG has established liability on behalf of all the named entity defendants: (1) **The Trump Organization Inc.**, **the Trump Organization LLC**, **DJT Holdings LLC**, and **DJT Holdings Managing Member LLC**, as each participated in the preparation, submission and certification of the SFCs after July 13, 2014 through the acts of the individual defendants as described *supra*; (2) the **DJT Revocable Trust**, as both Donald Trump Jr. and Allen Weisselberg certified the accuracy of the 2016-2019 SFCs in their capacities as "Trustee, the Donald J. Trump Revocable Trust dated April 7, 2014, as amended" (NYSCEF Doc. No. 808); (3) **Trump Endeavor LLC**, which was the borrower on the Doral Loan, for which SFCs were submitted after July 13, 2014; (4) **401 North Wabash Venture LLC**, which was the borrower on a loan for "Trump Chicago," under which SFCs were required to be (and were) submitted

[27] Eric Trump also reaffirmed the SFCs accuracy on July 9, 2019. NYSCEF Doc. Nos. 782 at Row 679, 783 at Rows 638-40, 784 at Row 660, 1183.

[28] Jeffrey McConney acknowledged his personal role in preparing supporting data for Donald Trump's SFCs beginning in 2011, testifying that: "I assemble the documentation" and that he would send both supporting data spreadsheets and backup documentation to the accountants. He further conceded that the supporting data spreadsheets were referred to as "Jeff's supporting data" or "Jeff's supporting schedule." NYSCEF Doc. No. 822 at 40, 67-68, 212, 294.

after July 13, 2014; (5) **Trump Old Post Office LLC**, as it was the borrower on the "Old Post Office" loan, under which SFCs were required to be (and were) submitted after July 13, 2014; and **Seven Springs LLC**, the borrowing entity (as described *supra*) under which SFCs were required to be (and were) submitted after July 13, 2014.

Injunctive Relief

OAG has prevailed on liability on its first cause of action pursuant to Executive Law § 63(12) as against all defendants: Donald J. Trump; Donald Trump, Jr.; Eric Trump; Allen Weisselberg; Jeffrey McConney; the DJT Revocable Trust; the Trump Organization Inc; the Trump Organization LLC; DJT Holdings LLC; DJT Holdings Managing Member LLC; Trump Endeavor 12 LLC; 401 North Wabash Venture LLC; Trump Old Post Office LLC; 40 Wall Street LLC; and Seven Springs LLC.

If liability is established under Executive Law § 63(12), the statute itself provides that the attorney general may obtain "an order enjoining the continuance of such business activity or of any fraudulent or illegal acts... and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of ... section one hundred thirty of the general business law...."

"[T]he Attorney General may obtain permanent injunctive relief under... Executive Law § 63(12) upon a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d at 496-97 (further stating "[t]his is not a 'run of the mill' action for an injunction, but rather one authorized by remedial legislation, brought by the Attorney-General on behalf of the People of the State and for the purposes of preventing fraud and defeating exploitation") (internal citations omitted).

Having found, at the commencement of the action, that OAG had preliminarily demonstrated defendants' "propensity to engage in persistent fraud," this Court appointed the Hon. Barbara S. Jones (ret.) as an independent monitor "to ensure there is no further fraud or illegality that violates § 63(12) pending the final disposition of this action." NYSCEF Doc. No. 194. On August 3, 2023, Judge Jones reported as follows:

> [S]ince my appointment I have reviewed material financial and accounting information submitted by the Trump Organization. As part of my review, I have made preliminary observations regarding certain current financial disclosures with respect to the Trump Organization's reporting of financial information. Specifically, I have observed that information regarding certain material liabilities provided to lenders – such as intercompany loans between or among Trust entities and Donald J. Trump, certain of the Trust's contingent liabilities, as well as refundable golf club membership deposits—has been incomplete. The Trust also has not consistently provided all required annual and quarterly certifications attesting to the accuracy of certain financial statements.

> In addition, annual audited financial statements for certain entities, prepared by an external accounting firm, list depreciation expenses. However, interim internally prepared financial statements provided to third parties for these same entities inconsistently report depreciation expenses.

NYSCEF Doc. No. 647. Even with a preliminary injunction in place, and with an independent monitor overseeing their compliance, defendants have continued to disseminate false and misleading information while conducting business. This ongoing flouting of this Court's prior order, combined with the persistent nature of the false SFCs year after year, have demonstrated the necessity of canceling the certificates filed under GBL § 130, as the statute provides. People v Northern Leasing, 70 Misc 3d 256, 279-80 (Sup Ct, NY County 2020) (denying a trial on the petition and ordering the LLC respondents to dissolve upon a finding of persistent fraud under Executive Law § 63(12)).

Having prevailed on liability on a standalone Executive Law § 63(12) cause of action, the Attorney General is entitled to the first two prayers for relief sought in her complaint: (1) canceling any certificate filed under and by virtue of the provisions of New York General Business Law § 130 for all the entity defendants found liable, as well as any other entity controlled or beneficially owned by the individual defendants found liable herein, which and who participated in or benefitted from the foregoing fraudulent schemes; and (2) appointing an independent monitor to oversee compliance, financial reporting, valuations, and disclosures to lenders, insurers, and tax authorities at the Trump Organization. NYSCEF Doc. No. 1 at 213.

Remaining Issues to be Determined at Trial

Anything presented in the parties' moving papers that this Court has not ruled upon in this Decision and Order, including determinations on liability for the second through seventh causes of action, the amount of disgorgement of profits to which OAG is entitled, and determinations on the third through ninth prayers for relief sought by OAG in its complaint, presents disputed issues of fact that shall proceed to trial.

Conclusion

For the reasons stated herein, it is hereby

ORDERED that defendants' motion for summary judgment is denied; and it is further

ORDERED that plaintiff's motion for sanctions is granted in part, to the extent of sanctioning Michael Madaio, Esq. (Habba Madaio & Associates, LLP), Clifford S. Robert, Esq. (Robert & Robert PLLC), Michael Farina Esq. (Robert & Robert PLLC), Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC), and Armen Morian (Morian Law PLLC) in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Decision and Order; and it is further

ORDERED that plaintiff's motion for partial summary judgment on its first cause of action is granted in part, to the extent of finding defendants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, the DJT Revocable Trust, the Trump Organization Inc, the Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC to be liable as a matter of law for persistent violations of Executive Law § 63(12); and it is further

ORDERED that any certificates filed under and by virtue of GBL § 130 by any of the entity defendants or by any other entity controlled or beneficially owned by Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney are canceled; and it is further

ORDERED that within 10 days of the date of this order, the parties are directed to recommend the names of no more than three potential independent receivers to manage the dissolution of the canceled LLCs; and it is further

ORDERED that the Hon. Barbara S. Jones (ret.) shall continue to serve as an independent monitor of the Trump Organization until further Court order; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

9/26/2023
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[X]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

vs.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC,

Defendants.

Index No. 452564/2022

AFFIRMATION OF SERVICE

Motion Seq. No. 028

CHRIS D. KRIMITSOS, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms the following statements to be true under the penalty of perjury:

1. I am an associate of the law firm of Robert & Robert PLLC, and am not a party to the above-captioned action.

2. On October 23, 2023, I served the within Notice of Appeal and Informational Statement, both dated October 23, 2023, together with a copy of the Decision and Order of the Supreme Court of the State of New York, New York County (Honorable Arthur F. Engoron, J.S.C.), dated September 26, 2023, with Notice of Entry, upon the following parties, at the addresses listed after each party's name, by depositing a true copy of same enclosed in a postpaid

properly addressed wrapper in official deposit under the exclusive care and custody of the United States Postal Service within the State of New York:

Kevin C. Wallace, Esq.
Colleen K. Faherty, Esq.
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Counsel for Plaintiff

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Dated: Uniondale, New York
October 23, 2023

Chris D. Krimitsos
CHRIS D. KRIMITSOS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

v.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

Defendants.

Michael Farina, Esq.,

Attorney for Defendants.

Index No: 452564/2022

Engoron, J.S.C.

NOTICE OF APPEAL

Motion Seq. No. 028

PLEASE TAKE NOTICE THAT, pursuant to CPLR §§ 5511 and 5515, Michael Farina, Esq. (hereinafter referred to as "Mr. Farina"), hereby appeals to the Appellate Division, First Department, from the Decision and Order on Motion by Hon. Arthur F. Engoron, J.S.C., dated September 26, 2023 (NYSCEF Doc. No. 1533), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on September 27, 2023, and served by Notice of Entry on September 27, 2023, which granted Plaintiff's motion for sanctions.

This appeal is taken from each and every part of the Order insofar as Mr. Farina is aggrieved. A copy of the Informational Statement pursuant to 22 NYCRR 1250.3(a) is attached hereto as Exhibit A.

Dated: New York, New York
October 23, 2023

Respectfully submitted,

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-and-

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EXHIBIT “A”

Supreme Court of the State of New York
Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

- against -

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC.,THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type

- ☒ Civil Action
- ☐ CPLR article 75 Arbitration
- ☐ Action Commenced under CPLR 214-g
- ☐ CPLR article 78 Proceeding
- ☐ Special Proceeding Other
- ☐ Habeas Corpus Proceeding

Filing Type

- ☒ Appeal
- ☐ Original Proceedings
  - ☐ CPLR Article 78
  - ☐ Eminent Domain
  - ☐ Labor Law 220 or 220-b
  - ☐ Public Officers Law § 36
  - ☐ Real Property Tax Law § 1278
- ☐ Transferred Proceeding
  - ☐ CPLR Article 78
  - ☐ Executive Law § 298
- ☐ CPLR 5704 Review

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

☐ Administrative Review	☒ Business Relationships	☒ Commercial	☐ Contracts
☐ Declaratory Judgment	☐ Domestic Relations	☐ Election Law	☐ Estate Matters
☐ Family Court	☐ Mortgage Foreclosure	☐ Miscellaneous	☐ Prisoner Discipline & Parole
☐ Real Property (other than foreclosure)	☒ Statutory	☐ Taxation	☐ Torts

Appeal

Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

☐ Amended Decree	☐ Determination	■ Order	☐ Resettled Order
☐ Amended Judgement	☐ Finding	☐ Order & Judgment	☐ Ruling
☐ Amended Order	☐ Interlocutory Decree	☐ Partial Decree	☐ Other (specify):
■ Decision	☐ Interlocutory Judgment	☐ Resettled Decree	
☐ Decree	☐ Judgment	☐ Resettled Judgment	

Court: Supreme Court	County: New York
Dated: 09/26/2023	Entered: 09/27/2023
Judge (name in full): Hon. Arthur F. Engoron	Index No.: 452564/2022
Stage: ■ Interlocutory ☐ Final ☐ Post-Final	Trial: ☐ Yes ■ No If Yes: ☐ Jury ☐ Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? ■ Yes ☐ No

If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

2023-04925

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: ☐ Order to Show Cause ☐ Notice of Petition ☐ Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court	County: Choose County
Judge (name in full):	Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Michael Farina, Esq., appeals from the Decision and Order of Supreme Court, New York County (Hon. Arthur F. Engoron, J.S.C.), dated September 26, 2023 and entered by the Clerk of the Court on September 27, 2023, which granted Plaintiff's motions for sanctions.

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Whether Supreme Court committed errors of law and/or fact, abused its discretion, and/or acted in excess of its jurisdiction by, inter alia, granting Plaintiff's motion for sanctions against Michael Farina, Esq. in the amount of $7,500.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	PEOPLE OF THE STATE OF NEW YORK	Plaintiff	Respondent
2	DONALD J. TRUMP	Defendant	None
3	DONALD TRUMP, JR.	Defendant	None
4	ERIC TRUMP	Defendant	None
5	ALLEN WEISSELBERG	Defendant	None
6	JEFFREY MCCONNEY	Defendant	None
7	THE DONALD J. TRUMP REVOCABLE TRUST	Defendant	None
8	THE TRUMP ORGANIZATION, INC.	Defendant	None
9	THE TRUMP ORGANIZATION LLC	Defendant	None
10	DJT HOLDINGS LLC	Defendant	None
11	DJT HOLDINGS MANAGING MEMBER	Defendant	None
12	TRUMP ENDEAVOR 12 LLC	Defendant	None
13	401 NORTH WABASH VENTURE LLC	Defendant	None
14	TRUMP OLD POST OFFICE LLC	Defendant	None
15	40 WALL STREET LLC	Defendant	None
16	SEVEN SPRINGS LLC	Defendant	None
17	Michael Farina, Esq.	Petitioner	Appellant
18			
19			
20			

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Kevin C. Wallace, Esq. and Colleen K. Faherty, Esq., Office of the New York State Attorney General			
Address: 28 Liberty Street			
City: New York	**State:** New York	**Zip:** 10005	**Telephone No:** 212-416-6046
E-mail Address: kevin.wallace@ag.ny.gov; colleen.faherty@ag.ny.gov			
Attorney Type: ☐ Retained ☐ Assigned ■ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 1			
Attorney/Firm Name: Alina Habba, Esq. and Michael Madaio, Esq., Habba Madaio & Associates, LLP			
Address: 112 West 34th Street, 17th &18th Floors			
City: New York	**State:** New York	**Zip:** 10020	**Telephone No:** 908-869-1188
E-mail Address: ahabba@habbalw.com; mmadaio@habbalaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 2, 5-16			
Attorney/Firm Name: Christopher M. Kise, Esq., Continental PLLC			
Address: 101 North Monroe Street, Suite 750			
City: Tallahassee	**State:** Florida	**Zip:** 32301	**Telephone No:** 305-677-2707
E-mail Address: ckise@continentalpllc.com			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ■ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 7, 10-16			
Attorney/Firm Name: Clifford S. Robert, Esq. and Michael Farina, Esq., Robert & Robert PLLC			
Address: 526 RXR Plaza			
City: Uniondale	**State:** New York	**Zip:** 11556	**Telephone No:** 516-832-7000
E-mail Address: crobert@robertlaw.com; mfarina@robertlaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 3-4			
Attorney/Firm Name: Michael S. Ross, Esq., Law Offices of Michael S. Ross			
Address: 640 East 42nd Street, 47th Floor			
City: New York	**State:** NY	**Zip:** 10165	**Telephone No:** 212-505-4060
E-mail Address: michaelross@rosslaw.org			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ■ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 17			
Attorney/Firm Name:			
Address:			
City:	**State:**	**Zip:**	**Telephone No:**
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

-against-

DONALD J. TRUMP, *et al.*,

Defendants.

Index No. 452564/2022

NOTICE OF ENTRY

PLEASE TAKE NOTICE that annexed hereto is a true and correct copy of the Decision and Order of the Honorable Arthur F. Engoron, J.S.C. dated September 26, 2023, on Motion Sequence Numbers 027, 028, and 029 (NYSCEF Nos. 1531, 1532, 1533), filed and entered in the Office of the Clerk of the Supreme Court, New York County on the 27th day of September, 2023.

Dated: New York, New York
September 27, 2023

LETITIA JAMES
Attorney General of the State of New York

By: */s/ Colleen K Faherty*
Colleen K. Faherty
Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6046
colleen.faherty@ag.ny.gov

Attorney for the People of the State of New York

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON **PART** 37

Justice

----------X

INDEX NO. 452564/2022

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

MOTION DATES 08/30/2023, 08/30/2023, 09/05/2023

Plaintiff,

MOTION SEQ. NO. 026, 027, 028

- v -

DONALD J. TRUMP, DONALD TRUMP JR, ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

DECISION + ORDER ON MOTIONS

Defendants.

----------X

The following e-filed documents, listed by NYSCEF document number (Motion 026) 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1292, 1293, 1294, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415,

1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1442, 1443, 1444, 1445, 1446, 1447

were read on this motion for PARTIAL SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 027) 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1474

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 028) 1263, 1264, 1265, 1276, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473

were read on this motion for SANCTIONS.

Upon the foregoing documents, it is hereby ordered that defendants' motion for summary judgment is denied, plaintiff's motion for partial summary judgment is granted in part, and plaintiff's motion for sanctions is granted in part, all as detailed herein.

This action arises out of a years-long investigation that plaintiff, the Office of the Attorney General of the State of New York ("OAG"), conducted into certain business practices that defendants engaged in from 2011 through 2021. OAG alleges that the individual and entity defendants committed repeated and persistent fraud by preparing, certifying, and submitting to lenders and insurers false and misleading financial statements, thus violating New York Executive Law § 63(12).

Procedural Background

In 2020, OAG commenced a special proceeding seeking to enforce a series of subpoenas against various named defendants and other persons and entities. This Court presided over that proceeding and issued several orders compelling compliance with OAG's subpoenas. See People v The Trump Org., Sup Ct, NY County, Index No. 541685/2020. During that proceeding, OAG and the Trump Organization entered into an agreement, which, broadly speaking, tolled the statute of limitations from November 5, 2020, through May 31, 2022. NYSCEF Doc. No. 1260.

On November 3, 2022, this Court found preliminarily that defendants had a propensity to engage in persistent fraud by submitting false and misleading Statements of Financial Condition ("SFCs") on behalf of defendant Donald J. Trump ("Donald Trump"). NYSCEF Doc. No. 183. Accordingly, the Court granted a preliminary injunction against any further fraud and appointed the Hon. Barbara S. Jones (ret.) as an independent monitor to oversee defendants' financial statements and significant asset transfers. NYSCEF Doc. Nos. 193 and 194.

Defendants moved to dismiss the complaint. In a Decision and Order dated January 6, 2023, this Court denied the motion. NYSCEF Doc. Nos. 453. Defendants appealed, resulting in a January 6, 2023 Order wherein the Appellate Division, First Department modified this Court's order to the extent of: (1) declaring that the "continuing wrong doctrine does not delay or extend [the statute of limitations]"; (2) finding that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and timely against defendants not subject to the tolling agreement if they accrued after February 6, 2016; and (3) dismissing the complaint as against defendant Ivanka Trump on statute of limitations grounds, finding that she was not an employee of the Trump Organization at the time at which the parties entered into the tolling agreement. People v Trump, 217 AD3d 609 (1st Dept 2023).

The Appellate Division declined to dismiss *any* other defendants or *any* causes of action.

Discovery ended on July 28, 2023, and OAG filed a note of issue shortly thereafter. NYSCEF Doc. No. 644. OAG now moves for partial summary judgment on its first cause of action, for fraud under Executive Law § 63(12). NYSCEF Doc. No. 765. Separately, plaintiff now moves, pursuant to 22 NYCRR 130-1.1, to sanction defendants for frivolous motion practice. NYSCEF Doc. No. 1263. Defendants also move for summary judgment, seeking to dismiss the complaint in its entirety. NYSCEF Doc. No. 834.

Executive Law § 63(12)

Executive Law § 63(12) provides, as here pertinent, as follows:

> Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of section four hundred forty of the former penal law or section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper. The word "fraud" or "fraudulent" as used herein shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions. The term "persistent fraud" or "illegality" as used herein shall include continuance or carrying on of any fraudulent or illegal act or conduct. The term "repeated" as used herein shall include repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON ALL CAUSES OF ACTION

Arguments Defendants Raise Again

Standing and Capacity to Sue

Defendants' arguments that OAG has neither capacity nor standing to sue under Executive Law § 63(12), and that the disclaimers of non-party accountants Mazars insulate defendants, invoke the time-loop in the film "Groundhog Day." This Court emphatically rejected these arguments in its preliminary injunction decision and in its dismissal decision, and the First Department affirmed both. Defendants' contention that a different procedural posture mandates a reconsideration, or *a fortiori*, a reversal, is pure sophistry[1].

As this Court and others have made abundantly clear, "[i]t is not disputed that the Attorney General is empowered to sue for violations of [Executive Law § 63(12)]." People v Greenberg, 21 NY3d 439, 446 (2013) (finding Executive Law § 63(12) to be broadly worded anti-fraud device); People v Ford Motor Co., 74 NY2d 495, 502 (1989) ("Executive Law § 63(12) is the procedural route by which the Attorney-General may apply to Supreme Court for an order enjoining repeated illegal or fraudulent acts").

Parens Patriae and Consumer Ambit

Defendants repeat the erroneous argument that the complaint must be dismissed because OAG cannot demonstrate the requirements of a *parens patriae* action, which is one in the public interest. "*Parens patriae* is a common-law standing doctrine that permits the state to commence an action to protect a public interest, like the safety, health or welfare of its citizens." People v Grasso, 11 NY3d 64, 72 at n 4 (2008). Invocation of such doctrine, or its requirements, is not necessary where, as here, the New York legislature has specifically empowered the Attorney General to bring such an action pursuant to Executive Law § 63(12). People v Credit Suisse Sec. (USA) LLC, 31 NY3d 622, 633 (2018) ("it is undisputed that Executive Law § 63(12) gives the Attorney General standing to redress liabilities recognized elsewhere in the law, expanding the scope of available remedies"); People v Trump Entrepreneur Initiative LLC, 137 AD3d 409, 417 (1st Dept 2016) ("[E]ven apart from prevailing authority, the language of the statute itself appears to authorize a cause of action; like similar statutes that authorize causes of action, § 63(12) defines the fraudulent conduct that it prohibits, authorizes the Attorney General to commence an action or proceeding to foreclose that conduct, and specifies the relief, including equitable relief, that the Attorney General may seek").

In any event, even if compliance with the requirements of the *parens patriae* doctrine is necessary, which it is not, OAG has easily satisfied those requirements, as it is well-settled that "[i]n varying contexts, courts have held that a state has a quasi-sovereign interest in protecting the integrity of the marketplace." Grasso at 69 n 4; People v Coventry First LLC, 52 AD3d 345, 346 (1st Dept 2008) ("the claim pursuant to Executive Law § 63(12) constituted proper exercises

[1] Indeed, the Court made this crystal clear in its January 6, 2023 order when it found: "Here, the issues of capacity and standing, are pure issues of law and do not depend on a trial of disputed issues of fact. Simply put, who the instant parties are and what the law says, which determine capacity and standing, are not disputed issues of fact that need to be tried." NYSCEF Doc. No. 453 at 4.

of the State's regulation of businesses within its borders in the interest of securing an honest marketplace"); People v Amazon.com, Inc., 550 F Supp 3d 122, 130-131 (SD NY 2021) ("[T]he State's statutory interest under § 63(12) encompasses the prevention of either 'fraudulent or illegal' business activities. Misconduct that is illegal for reasons other than fraud still implicates the government's interests in guaranteeing a marketplace that adheres to standards of fairness...").

Defendants' rehashed argument that OAG's complaint must be dismissed because it is not designed to protect consumers is unavailing. New York v Feldman, 210 F Supp 2d 294, 299-300 (SD NY 2002) ("[D]efendants' claim that section 63(12) is limited to consumer protection actions is simply incorrect. The New York Attorney General has repeatedly used section 63(12) to secure relief for persons who are not consumers in cases that are not consumer protection actions").

Defendants cite to the trial court decision People v Domino's Pizza, Inc., NY Slip Op 30015(U) (Sup Ct, NY County 2021), which is not binding on this Court, as authority for the proposition that any relief sought here should come in the form of private contract litigation, not "a law enforcement action under a statute designed to address public harm." NYSCEF Doc. No. 835 at 39. However, Domino's is wholly distinguishable from the instant case. There, the Court found that "OAG did not establish that Domino's representations to franchisees... were false, deceptive, or misleading. Accordingly, the Court concludes that OAG has not established that Domino's engaged in conduct that 'tends to deceive or creates an atmosphere conducive to fraud.'" Domino's at 26[2]. Here, as discussed *infra*, OAG demonstrates that defendants repeatedly submitted fraudulent financial documents to obtain financial benefits which otherwise they would not have received.

Defendants glaringly misrepresent the requirements of an Executive Law § 63(12) cause of action. Citing to People v Northern Leasing Sys., Inc., 70 Misc 3d 256, 267 (Sup Ct, NY County 2021), defendants assert that OAG must show "the practice is one likely to mislead a reasonable consumer acting reasonably under the circumstances." NYSCEF Doc. No. 835 at 42. However, the word "consumer" does not appear anywhere in the referenced decision, and defendants' characterization of its holding is inaccurate[3]. Northern Leasing confirms that the "test for fraud under Executive Law § 63(12) is whether an act tends to deceive or creates an environment conducive to fraud." Northern Leasing at 267 (further holding "Executive Law § 63(12) expands fraud to encompass new liability, while including non-statutory fraud claims" and finding that "[a] claim under Executive Law § 63(12) is the exercise of 'the State's regulation of businesses within its borders in the interest of securing an honest marketplace'").

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[2] As the failure to demonstrate false misrepresentations foreclosed the possibility of liability on that issue in Domino's, any commentary about the statute's requirements was pure *dicta*.

[3] Although "consumer" does appear in the First Department's affirmance of Northern Leasing, it does not advance defendants' proposition that Executive Law § 63(12) actions be consumer oriented; it simply reaffirms that "the test for fraud is whether the targeted act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." 193 AD3d 67 (1st Dept 2021). The fact that Northern Leasing challenged actions targeted at consumers does not mean that Executive Law § 63(12) is restricted to such actions.

Non-Party Disclaimers

Defendants, yet again, argue that OAG's complaint must be dismissed because the SFCs contain language, provided by non-party accountants Mazars, that indicate that they have not audited or reviewed the accompanying financial statements and therefore cannot express an opinion as to whether the financial statements comply with Generally Accepted Accounting Principles ("GAAP"). However, as this Court already ruled, these non-party disclaimers do not insulate defendants from liability, as they plainly state that "Donald J. Trump is responsible for the preparation and fair presentation of the financial statement in accordance with accounting principles generally accepted in the United States of America and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the financial statement." NYSCEF Doc. No. 183.

As this Court explained in its November 3, 2022 Decision and Order: "[t]he law is abundantly clear that" using a disclaimer as a defense to a justifiable reliance claim requires proof that: "(1) the disclaimer is made sufficiently specific to the particular type of fact misrepresented or undisclosed; and (2) the alleged misrepresentations or omissions did not concern facts peculiarly within the [defendant's] knowledge." Basis Yield Alpha Fund (Master) v Goldman Sachs Grp., Inc., 115 AD3d 128, 137 (1st Dept 2014) ("a [plaintiff] may not be precluded from claiming reliance on misrepresentation of facts peculiarly within the [defendant's] knowledge"); People v Bull Inv. Grp., Inc., 46 AD2d 25, 29 (3d Dept 1974) ("It has been stated that '[t]he rule is clear that where one party to a transaction has superior knowledge, or means of knowledge not open to both parties alike, he is under a legal obligation to speak and his silence constitutes fraud"). As the SFCs did not particularize the type of fact misrepresented or undisclosed and were unquestionably based on information peculiarly within defendants' knowledge, defendants may not rely on such purported disclaimers as a defense.

In sum, the Mazars disclaimers put the onus for accuracy squarely on defendants' shoulders.

Scienter and "Participation" Requirements

Defendants erroneously claim that Fletcher v Dakota, Inc, 99 AD3d 43, 49 (1st Dept 2012), stands for the proposition that the purported "participation element [of a cause of action under Executive Law § 63(12)] is satisfied where the defendant 'directed, controlled, or ratified the decision that led to plaintiff's injury.'" However, Fletcher is not an Executive Law § 63(12) action, it was brought as a corporate tort; accordingly, is not relevant here.[4] Executive Law § 63(12) is much more than a mere codification of common law fraud.

Defendants also incorrectly rely on Abrahami v UPC Const. Co., 224 AD2d 231, 233 (1st Dept 1996), for the proposition that "[m]erely providing copies of purportedly false financial statements is insufficient." NYSCEF Doc. No. 835 at 55. However, as Abrahami was not brought pursuant to Executive Law § 63(12), its analysis regarding "intent to deceive" is irrelevant. Unlike the situation in Abrahami, where an action is brought pursuant to Executive

[4] In fact, had defendants not cut off the beginning of the sentence they cited, it would be evident on its face that such case is legally irrelevant, as the full sentence reads: "A leading treatise on corporations states that a director may be held individually liable to third parties for a corporate tort if he either participated in the tort or else 'directed, controlled, approved or ratified the decision that led to the plaintiff's injury.'" Fletcher at 49.

Law § 63(12), "good faith or lack of fraudulent intent is not in issue." People v Interstate Tractor Trailer Training, Inc., 66 Misc 2d 678, 682 (Sup Ct, NY County 1971) (holding liability under Executive Law § 63(12) does not require demonstrating an "intent to defraud"); Trump Entrepreneur Initiative at 417 ("fraud under section 63(12) may be established without proof of scienter or reliance"); Bull Inv. Grp. at 27 ("[i]t is well-settled that the definition of fraud under subdivision 12 of section 63 of the Executive Law is extremely broad and proof of scienter is not necessary").

Disgorgement of Profits

In flagrant disregard of prior orders of this Court *and* the First Department, defendants repeat the untenable notion that "disgorgement is unavailable as a matter of law" in Executive Law § 63(12) actions. NYSCEF Doc. No. 835 at 70. This is patently false, as defendants are, or certainly should be, aware that the Appellate Division, First Department made it clear *in this very case* that "[w]e have already held that the failure to allege losses does not require dismissal of a claim for disgorgement under Executive Law § 63(12)." Trump, 217 AD3d at 610.

Defendants nonetheless rely on the trial court decision in People v Direct Revenue, LLC, 19 Misc 3d 1124(A) (Sup Ct, NY County 2008), for the proposition that Executive Law § 63(12) "do[es] no[t] authorize the general disgorgement of profits received from sources other than the public." NYSCEF Doc. No. 835 at 71-72. However, defendants' neglect to mention that Direct Revenue was superseded, and essentially overruled, in 2016 by the New York Court of Appeals in People v Greenberg, which unequivocally held that "disgorgement is an available remedy under the Martin Act and the Executive Law." People v Greenberg, 27 NY3d 490, 497 (2016).

Also fatally flawed is defendants' reliance on People v Frink Am., Inc., 2 AD3d 1379, 1380 (4th Dept 2003), as it relies on the outdated proposition that Executive Law § 63(12) "does not create any new causes of action" and thus, the remedy of disgorgement is unavailable. NYSCEF Doc. No. 835 at 73-74. However, in Trump Entrepreneur Initiative, in which at least three of the instant defendants were parties, the First Department unambiguously declared that "the Attorney General is, in fact, authorized to bring a cause of action for fraud under Executive Law § 63(12)." Trump Entrepreneur Initiative at 418; see also People v Pharmacia Corp., 27 Misc 3d 368, 373 (Sup Ct, NY County 2010) (holding "Executive Law § 63(12) applies to fraudulent conduct actionable at common law, as well as to conduct for which liability arises solely from the statute").

Defendants incorrectly posit that, under People v Ernst & Young, LLP, 114 AD3d 569 (1st Dept 2014), disgorgement is available under the Martin Act but not under Executive Law § 63(12). NYSCEF Doc. No. 836 at 73. This is simply untrue. In Ernst & Young, the First Department specifically held that disgorgement was an available and potentially "crucial" remedy in an Executive Law § 63(12) action. Ernst & Young at 570.

Defendants correctly assert that "the record is devoid of any evidence of default, breach, late payment, or any complaint of harm" and argue that as none of the recipients of the subject SFCs ever lodged a complaint with OAG or otherwise claimed damages, disgorgement of profits would be inappropriate. NYSCEF Doc. No. 835 at 40.

However, that is completely irrelevant. As the Ernst & Young Court noted:

> [W]here, as here, there is a claim based on fraudulent activity, disgorgement may be available as an equitable remedy, notwithstanding the absence of loss to individuals or independent claims for restitution. Disgorgement is distinct from the remedy of restitution because it focuses on the gain to the wrongdoer as opposed to the loss to the victim. Thus, disgorgement aims to deter wrongdoing by preventing the wrongdoer from retaining ill-gotten gains from fraudulent conduct. Accordingly, the remedy of disgorgement does not require a showing or allegation of direct losses to consumers or the public; the source of the ill-gotten gains is "immaterial."

Id. (disgorgement is not impermissible penalty "since the wrongdoer who is deprived of an illicit gain is ideally left in the position he would have been had there been no misconduct") (internal citations omitted); see also Amazon.com at 130 ("Executive Law § 63(12) authorizes the Attorney General to seek injunctive and other relief", and finding "the Attorney General can seek disgorgement of profits on the State's behalf").

Sanctionable Conduct for Frivolous Motion Practice

In response to both OAG's request for a preliminary injunction and to defendants' motions to dismiss, this Court rejected every one of the aforementioned arguments. In rejecting such arguments for the second time, this Court cautioned that "sophisticated counsel should have known better." [5] NYSCEF Doc. No. 453 at 5. However, the Court declined to impose sanctions, believing it had "made its point." Id.

Apparently, the point was not received.

One would not know from reading defendants' papers that this Court has already *twice* ruled against these arguments, called them frivolous, and *twice* been affirmed by the First Department.

"In its discretion, a court may award costs and financial sanctions against an attorney or party resulting from frivolous conduct." Kamen v Diaz-Kamen, 40 AD3d 937, 937 (2d Dept 2007). See Yan v Klein, 35 AD3d 729, 729–30 (2d Dept 2006) ("The plaintiff, following two prior actions, has 'continued to press the same patently meritless claims,' most of which are now barred by the doctrines of res judicata and collateral estoppel").

Defendants' conduct in reiterating these frivolous arguments is egregious. We are way beyond the point of "sophisticated counsel should have known better"; we are at the point of intentional and blatant disregard of controlling authority and law of the case. This Court emphatically rejected these arguments, as did the First Department. Defendants' repetition of them here is indefensible.

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5 The Court even went so far as to caution that the "arguments were borderline frivolous even the first time defendants made them." NYSCEF Doc. No. 453 at 3.

Pursuant to New York Administrative Code § 130-1.1, "[t]he Court, as appropriate, may make such an award of costs or impose such financial sanctions against either an attorney or a party to the litigation or against both." The provision further states that:

> For purposes of this Part, conduct is frivolous if:
>
> (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
>
> (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
>
> (3) it asserts material factual statements that are false.

22 NYCRR 130-1.1(c). Defendants' inscrutable persistence in re-presenting these arguments clearly satisfies the first of these three possible criteria.

When considering imposing sanctions "[a]mong the factors [the court] is directed to consider is whether the conduct was continued when it became apparent, or should have become apparent, that the conduct was frivolous, or when such was brought to the attention of the parties or to counsel." Levy v Carol Mgmt. Corp., 260 AD2d 27, 34 (1st Dept 1999) (further finding that sanctions both "punish past conduct" and "they are goal oriented, in that they are useful in deterring future frivolous conduct").

In its January 6, 2023 Decision and Order, this Court warned defendants that their "reiteration of [these previously rejected arguments] scattered across five different motions to dismis[s] was frivolous." NYSCEF Doc. No. 453 at 3.

In a last-ditch attempt to stave off sanctions, defendants have submitted an affirmation by the Hon. Leonard B. Austin (ret.), who had a supremely distinguished judicial career, culminating in 12 years on the Appellate Division, Second Department. NYSCEF Doc. No. 1449. Justice Austin presents what is essentially a primer on the interplay between motions to dismiss and motions for summary judgment, and every point of law is valid.

However, it is wholly invalid as a reason for this Court to deny sanctions. First, legal arguments are for counsel to make, not for experts to submit. "The rule prohibiting experts from providing their legal opinions or conclusions is 'so well-established that it is often deemed a basic premise or assumption of evidence law—a kind of axiomatic principle.'" In re Initial Pub. Offering Sec. Litig., 174 F Supp 2d 61, 64 (SD NY 2001) (citing Thomas Baker, The Impropriety of Expert Witness Testimony on the Law, 40 U Kan LRev 325, 352 (1992) (precluding "expert affidavits" on the law); accord, Note, Expert Legal Testimony, 97 Harv LRev 797, 797 (1984) ("it remains black-letter law that expert legal testimony is not permissible"). Neither defendants nor Justice Austin has sought permission to file an amicus brief. In their own submissions, defendants have expounded on the law of capacity, standing, disclaimers, motions to dismiss, motions for summary judgment, and sanctions. The heft and prestige of a legal lion adds nothing.

More importantly, the subject affirmation utterly fails to fit the specific facts of this case into the general principles it enunciates. In many situations, discovery, and a complete record, and the reversal of the burden of proof, will turn the tide, requiring that a valid complaint be dismissed because there is no evidence to support it. But standing and capacity are legal questions, not factual issues. Crucially, while defendants have, by their own account, conducted extensive discovery and have created a complete record, they fail to point to a single fact that discovery has uncovered, let alone a single fact in the record, that changes the calculus of their denied and doomed capacity and standing arguments.

Capacity and standing are not esoteric concepts. Infants, legally declared incompetents, and persons under certain legal disabilities are not allowed to sue. The New York Attorney General is none of the above. If my sibling or neighbor is harmed, I do not have standing to sue for his or her injury. Citizens may not sue to prevent governmental actions unless they may suffer some personal harm. Executive Law § 63(12) was promulgated to give the Attorney General standing to sue on behalf of the people of New York to prevent or deter the precise type of fraud here at issue. Arguments to the contrary are risible.

Defendants' arguments that the factual record developed in discovery changed the landscape under which standing should be viewed is legally preposterous. The best that defendants could muster at oral argument was to contend (incorrectly) that plaintiff cannot sue because the subject transactions were between private entities, and nobody lost money. However, that is purely an argument on the merits, not an argument on standing. Taken to its logical extreme, absolutely any time a defendant denies liability, it could move to dismiss on the ground of lack of standing.

Exacerbating defendants' obstreperous conduct is their continued reliance on bogus arguments, in papers and oral argument. In defendants' world: rent regulated apartments are worth the same as unregulated apartments; restricted land is worth the same as unrestricted land; restrictions can evaporate into thin air; a disclaimer by one party casting responsibility on another party exonerates the other party's lies; the Attorney General of the State of New York does not have capacity to sue or standing to sue (never mind all those cases where the Attorney General has sued successfully) under a statute expressly designed to provide that right; all illegal acts are untimely if they stem from one untimely act; and square footage subjective.

That is a fantasy world, not the real world.

There is also a larger context to the sanctions issue. Several defendants are no strangers to sanctions and why courts are sometimes constrained to issue them. In the investigatory special proceeding this Court found Donald Trump in contempt of Court and sanctioned him $10,000 per day for failing to comply with his discovery obligations. This Court lifted the contempt after 11 days. The First Department affirmed the contempt and the fines. People v Trump, 213 AD3d 503, 504 (1st Dept 2023) ("[T]he financial sanction to compel compliance was a proper exercise of the court's discretionary power and was not excessive or otherwise improper, under the particular circumstances").

In Donald J. Trump v Hillary R. Clinton, 22-14102-CV-DMM, ("Order on Motion for Indicative Ruling") (filed September 15, 2023) (SD FL), Judge Donald M. Middlebrooks denied what in

New York legal parlance would be called "a motion to reargue," pursuant to which Donald Trump asked Judge Middlebrooks to vacate sanctions imposed on him and his legal team totaling close to one million dollars. Judge Middlebrooks wrote, on the first page thereof, that "Movants acted in bad faith in bringing this lawsuit and that this case exemplifies Mr. Trump's history of abusing the judicial process.[6]" Id.

Unfortunately, sanctions are the only way to impress upon defendants' attorneys the consequences of engaging in repetitive, frivolous motion practice after this Court, affirmed by the Appellate Division, expressly warned them against doing so. Boye v Rubin & Bailin, LLP, 152 AD3d 1, 11 (1st Dept 2017) ("sanctions serve to deter future frivolous conduct" and their "goals include preventing the waste of judicial resources, and deterring vexatious litigation and dilatory or malicious litigation tactics").

It is of no consequence whether the arguments were made at the direction of the clients or *sua sponte* by the attorneys; counsel are "ethically obligated to withdraw any baseless and false claims, if not upon [their] own review of the record, certainly by the time [the] Supreme Court advised [them] of this fact." Boye at 11 (upholding sanctions against attorneys because "counsel continued to... pursue claims which were completely without merit in law or fact."); see also Nachbaur v Am. Transit Ins. Co., 300 AD2d 74, 75 (1st Dept 2002) (motion court properly sanctioned attorneys for "repetitive and meritless motions"); Leventritt v Eckstein, 206 AD2d 313, 314 (1st Dept 1994) (affirming sanctions imposed on attorney for "repeated pattern of frivolous conduct"); William Stockler & Co. v Heller, 189 AD2d 601, 603 (1st Dept 1993) (affirming sanctions against attorney upon finding "there was no factual or legal basis for defendant's original cross motion, or for the reargument motion, that both motions were 'totally frivolous' and were submitted 'just really to delay'"). Counsel should be the first line of defense against frivolous litigation.

Accordingly, this Court grants OAG's motion for sanctions, in part, to the extent of sanctioning each of defendants' attorneys who signed their names to the instant legal briefs[7], in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Order.

Arguments Defendants Raise for the First Time

Summary Judgment Standard

To prevail on its motion for summary judgment on all causes of action, defendants must first "make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient

[6] One factor Judge Middlebrooks considered was Donald Trump's "disregard for legal principles and precedent." Id. at 14. In short, Donald Trump, and his lawyers, are not sanctions neophytes. This is not their first rodeo.

[7] The following attorneys signed their names to defendants' instant briefs and are, accordingly, sanctioned $7,500 each: Michael Madaio, Esq. (Habba Madaio & Associates, LLP); Clifford S. Robert, Esq. (Robert & Robert PLLC); Michael Farina Esq. (Robert & Robert PLLC); Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC); and Armen Morian (Morian Law PLLC).

evidence to eliminate any material issues of fact from the case." Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 (1985). "Failure [of the movant] to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers." Id. If the defendants make out their prima facie showing, the burden then shifts to plaintiff to offer evidence sufficient to rebut that showing by identifying disputed issues of fact that should go before a trier of fact.

Defendants strenuously argue throughout their briefs that OAG has not met her burden sufficient to defeat defendants' motion for summary judgment. However, defendants misstate the black letter law applicable to summary judgment, citing to City Dental Servs., P.C. v New York Cent. Mut., 34 Misc 3d 127(A) (App Term 2d, 11th, 13th Jud Dists 2011) for the flatly wrong proposition that "in order to defeat summary judgment on these claims of predicate illegality, the NYAG must, with respect to each predicate illegality attached, 'establish[] each element of its cause with respect to those causes of action.'" NYSCEF Doc. No. 835 at 62.

Not only does City Dental not stand for that proposition (it merely found that under the circumstances of that case, plaintiff's evidence failed to meet her burden on summary judgment), but the law is well-settled that "to defeat a motion for summary judgment the opposing party must 'show facts sufficient to require a trial of any issue of fact," not make out its own case. Zuckerman v City of New York, 49 NY2d 557, 562 (1980). While OAG must establish each and every element of its cause(s) of action in order to *prevail* on its own motion for summary judgment, in order to defeat defendants' motion for summary judgment (provided defendants are able to demonstrate a prima facie case) "an opposing party must 'show facts sufficient to require a trial of any issue of fact.'" Guzman v Strab Const. Corp., 228 AD2d 645, 646 (2d Dept 1996) ("evidentiary facts derived from the documents submitted [in opposition to summary judgment motion] are sufficient to present a triable issue of fact").

The "Worthless Clause"

Defendants rely on what they call a "worthless clause" set forth in the SFCs under the section entitled "Basis of Presentation" that reads, as here pertinent, as follows:

> Assets are stated at their estimated current values and liabilities at their estimated current amounts using various valuation methods. Such valuation methods include, but are not limited to, the use of appraisals, capitalization of anticipated earnings, recent sales and offers, and estimates of current values as determined by Mr. Trump in conjunction with his associates and, in some instances, outside professionals. Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates presented herein are not necessarily indicative of the amount that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts.

NYSCEF Doc. Nos. 769 at 7; 770 at 7; 771 at 7; 772 at 7; 773 at 7.

In his sworn deposition, Donald Trump spent a lot of time invoking this clause: "Well, they call it a 'disclaimer.' They call it 'worthless clause' too, because it makes the statement 'worthless.'" NYSCEF Doc. No. 859 at 67. Donald Trump goes on to say that "I have a clause in there that says, don't believe the statement, go out and do your own work. This statement is 'worthless.' It means nothing." Id. at 68. Furthermore, Donald Trump implies that he did not consider it important to review the SFCs for accuracy because of the existence of this purported "worthless clause":

> OAG: Does this refresh your recollection of the process whereby you would get final review of the Statement of Financial Condition?
>
> DJT: Yeah, I think generally. It's interesting. I would say as years went by, I got less and less and then once I became President, I would – if I saw it at all, I'd see it, you know, after it was already done.
>
> OAG: So in the period –
>
> DJT: Again, you know, I hate to be boring and tell you this. When you have the worthless clause on a piece of paper and the first – literally the first page you're reading about how this is a worthless statement from the standpoint of your using it as a bank or whatever –whoever may be using it, you tend not to get overly excited about it. I think it had very little impact, if any impact on the banks.
>
> ....
>
> OAG: So am I understanding that you didn't particularly care about what was in the Statement of Financial Condition?
>
> DJT: I didn't get involved in it very much. I felt it was a meaningless document, other than it was almost a list of my properties, with good faith effort of people trying to put some value down. It was a good faith effort.

Id. at 107-108. Defendants further submit the affidavit and deposition transcript of Robert Unell, who purports to be an expert in commercial real estate, for the proposition that because of "the worthless clause" in the SFC, "no lender relies on these for what it is." NYSCEF Doc. Nos. 1030 at 183-184; 1031.

However, defendants' reliance on these "worthless" disclaimers is worthless. The clause does not use the words "worthless" or "useless" or "ignore" or "disregard" or any similar words. It does not say, "the values herein are what I think the properties will be worth in ten or more years." Indeed, the quoted language uses the word "current" no less than five times, and the word "future" zero times.

Additionally, as discussed *supra*, a defendant may not rely on a disclaimer for misrepresentation of facts peculiarly within the defendant's knowledge. Basis Yield Alpha Fund at 136. Here, as the valuations of the subject properties are, obviously, peculiarly within defendants' knowledge, their reliance on them is to no avail.

Furthermore, "[t]his 'special facts doctrine' applies *regardless of the level of sophistication of the parties*." TIAA Glob. Invs. LLC v One Astoria Square LLC, 127 AD3d 75, 87 (1st Dept 2015) (emphasis added) (holding disclaimer does not bar liability for fraud where facts were peculiarly within disclaiming party's knowledge).

Thus, the "worthless clause" does not say what defendants say it says, does not rise to the level of an enforceable disclaimer, and cannot be used to insulate fraud as to facts peculiarly within defendants' knowledge, even vis-à-vis sophisticated recipients.

The Tolling Agreement

The First Department has declared that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and claims against defendants not subject to the tolling agreement are timely if they accrued after February 6, 2016. Trump, 217 AD3d at 611. Defendants concede that the tolling agreement binds each of the LLC-defendants and the Trump Organization. However, they argue that each of the individual defendants and the Donald J. Trump Revocable Trust (the "DJT Revocable Trust") are not bound by the agreement.

Alan Garten, the Trump Organization's Chief Legal Officer, originally entered into the tolling agreement on behalf of "the Trump Organization" on August 27, 2021; the agreement was extended one time by an amendment dated May 3, 2022. NYSCEF Doc. No. 1260. It tolls the statute of limitations for the period from November 5, 2020, through May 31, 2022. Id. at 2. The agreement contains a footnote to the entity "the Trump Organization" that reads as follows:

> As noted in the December 7, 2019 subpoena issued in this investigation to the Trump Organization, the "Trump Organization" as used herein includes The Trump Organization, Inc; DJT Holdings LLC; DJT Holdings Managing Member LLC; and any predecessors, successors, present or former parents, subsidiaries, and affiliates, whether direct or indirect; and all directors, officers, partners, employees, agents, contractors, consultants, representatives, and attorneys of the foregoing, and any other Persons associated with or acting on behalf of the foregoing, or acting on behalf of any predecessors, successors, or affiliates of the foregoing.

Id. at 4 n 1.

Thus, the tolling agreement at issue here binds "all directors [and] officers" and "present or former parents" of the Trump Organization and its affiliates and subsidiaries. Id. It is undisputed that at the time the tolling agreement was executed, each individual defendant, Donald J. Trump, Donald Trump Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney,

were all directors and/or officers of the Trump Organization. NYSCEF Doc. No. 1293 at ¶¶ 673, 680, 696, 710, 736.

Defendants argue that the non-signatory defendants are not bound by the agreement, citing Highland Crusader Offshore Partners, L.P. v Targeted Delivery Techs. Holdings, Ltd., 184 AD3d 116, 121 (1st Dept 2020), for the "general principal that only the parties to a contract are bound by its terms." NYSCEF Doc. No. 835 at 27. However, defendants fail to quote the following sentence, which provides that "[a] non-signatory may be bound by a contract under certain limited circumstances." Highland at 122. See also Oberon Sec., LLC v Titanic Ent. Holdings LLC, 198 AD3d 602, 603 (1st Dept 2021) (non-signatory companies bound by agreement with language defining signatory to include "all subsidiaries, affiliates, [and] successors").

In People v JUUL Labs, Inc., 212 AD3d 414, 417 (1st Dept 2023), in a case involving nearly identical language in a corporate tolling agreement[8], the First Department recently held that non-signatory corporate affiliates, officers, and directors were bound by the agreement. Similarly, here all the individual defendants are bound by the instant tolling agreement's terms and may be held liable for any claims that accrued after July 13, 2014.

Defendants argue that OAG is judicially estopped from asserting that the agreement binds the individual defendants based on statements OAG's counsel made during oral argument in the investigatory special proceeding. NYSCEF Doc. No. 1292 at 26. Specifically, on April 25, 2022, while seeking to hold Donald Trump in contempt for failing to comply with court orders, OAG's counsel stated: "[t]here is hard prejudice because Donald Trump is not a party to the tolling agreement, that tolling agreement only applies to the Trump Organization." NYSCEF Doc. No. 1041 at 59.

For judicial estoppel to be applicable: "First, the party against whom the estoppel is asserted must have argued an inconsistent position in a prior proceeding; and second, the prior inconsistent position must have been adopted by the court in some manner." Bates v Long Island R. Co., 997 F2d 1028, 1038 (2d Cir 1993).

Defendants are correct that the first prong is satisfied, in that the statements OAG's counsel made during oral argument are inconsistent with the position OAG is now taking. However, defendants cannot demonstrate that this Court adopted the prior position. Indeed, this Court did not need to, and did not, consider the tolling agreement when it issued its April 26, 2022 Decision and Order finding Donald Trump in contempt. See Ghatani v AGH Realty, LLC, 181 AD3d 909, 911 (2d Dept 2020) ("For the doctrine [of judicial estoppel] to apply, there must be a final determination endorsing the party's inconsistent position in the prior proceeding").

This Court has not addressed the tolling agreement until now. Accordingly, defendants cannot demonstrate that this Court adopted OAG's prior inconsistent position.

[8] The substantially similar tolling agreement at issue in Juul can be found under Index No. 452168/2019, NYSCEF Doc. No. 176.

Moreover, "[t]he party asserting estoppel must show with respect to himself: '(1) lack of knowledge of the true facts; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change in his position.'" BWA Corp. v Alltrans Exp. U.S.A., Inc., 112 AD2d 850, 853 (1st Dept 1985). Here, none of the defendants claim that they changed their positions or courses of conduct in reliance upon the statement of OAG's counsel during oral argument.

Finally, while judicial estoppel may be applied to prohibit inconsistent changes in factual positions, courts have declined to extend the doctrine to changes in legal positions. Seneca Nation of Indians v New York, 26 F Supp 2d 555, 565 (WD NY 1998), affd, 178 F3d 95 (2d Cir 1999) (finding "[t]here is no legal authority" for "broadening of the doctrine" to "include seemingly inconsistent legal positions"). Who physically signed the agreement is a question of fact; whom it binds is a question of law.

Defendants' argument that the DJT Revocable Trust is not bound by the tolling agreement falls flat. In his deposition, Donald Trump affirmed under oath that the assets of the Trump Organization are held in the DJT Revocable Trust, for which he is the sole donor and beneficiary. NYSCEF Doc. No. 859 at 21. Donald Trump also affirmed that at the time the trust was formed, he was the sole trustee and remained the sole trustee until 2017, when defendants Allen Weisselberg and Donald Trump, Jr. became the sole trustees. Id. at 20-24.

As every beneficiary, donor, and trustee of the DJT Revocable Trust is a defendant bound by the tolling agreement, and as the trust is unquestionably a "parent" of the Trump Organization, so too does the tolling agreement bind the DJT Revocable Trust. See People v Leasing Expenses Co. LLC, 199 AD3d 521, 522 (1st Dept 2021) ("It may likewise be inferred that the trustees had knowledge of the activities of the businesses they controlled through the trust mechanism. Hence, under Executive Law § 63(12), the family trusts and trustees may likewise be held liable for the fraud"); see e.g., Kurzman v Graham, 12 Misc 3d 586, 590 (Sup Ct, NY County 2006) ("courts will not allow the owner of assets to evade creditors by placing the property in a trust while retaining a right to revoke the trust").

Defendants cite to New York Estates, Powers and Trust Law § 11-1.1(b)(17) for the proposition that only a trustee may bind a trust to an agreement. However, § 11-1.1(b)(17) does not state this; rather, it states:

> (b) In the absence of contrary or limiting provisions in the court order or decree appointing a fiduciary, or in a subsequent order or decree, or in the will, deed or other instrument, every fiduciary is authorized:
>
> ...
>
> (17) To execute and deliver agreements, assignments, bills of sale, contracts, deeds, notes, receipts and any other instrument necessary or appropriate for the administration of the estate or trust.

This provision simply says what a fiduciary is permitted to do in the absence of a contrary provision. It does nothing to advance defendants' argument that *only* a trustee may bind a trust,

particularly since defendants fail to cite to any provision of the DJT Revocable Trust restricting who can bind it, as § 11-1.1(b)(17) anticipates.

Moreover, Korn v Korn, 206 AD3d 529, 530 (1st Dept 2022), upon which defendants inexplicably rely, is irrelevant to the instant analysis, as that case involved an examination by the court as to whether a fiduciary had a right or duty to negotiate on behalf of an estate pursuant to § 11-1.1(b)(13), not pursuant to § 11-1.1(b)(17), to which defendants cite.

Finally, "the Attorney General should not be limited, in [her] duty to protect the public interest, by an... agreement [s]he did not join." People v Coventry First LLC, 13 NY3d 108, 114 (2009) (holding Attorney General not bound by arbitration agreement when pursuing Executive Law § 63(12) claim and finding "[s]uch an arrangement between private parties cannot alter the Attorney General's statutory role or the remedies that [s]he is empowered to seek").

The tolling agreement was a mutually beneficial and common arrangement pursuant to which OAG agreed to hold off suing, and Alan Garten, on behalf of the Trump Organization, agreed to toll the statute of limitations. All defendants received the benefit of the bargain; OAG held off suing. OAG is entitled to its benefit of the bargain, the tolling of the statute of limitations, for the limited agreed-upon time, as against anyone it could have sued for the matters at issue at the time at which the agreement was executed. OAG clearly did not intend to permit defendants' principals to evade the tolling agreement based on a technicality contrary to the spirit of the agreement and controlling caselaw.

Statute of Limitations

As a general rule, statutes of limitation start running when a claim accrues, that is, when it can be sued upon. In arguing that OAG's causes of action are untimely, defendants incorrectly assert that the statute of limitations starts running on the date the parties entered into the subject agreements, or when the loans closed. However, the First Department did not use the word "closed," it used the word "completed." Trump, 217 AD3d at 611. Obviously, the transactions were not "completed" while the defendants were still obligated to, and did, annually submit current SFCs to comply with the terms of the loan agreements.

Defendants further assert that any continuing documentation provided after the agreements were entered into, or when the loans closed, is of no consequence if the proceeds were distributed prior to July 2014. NYSCEF Doc. No. 835 at 18. This argument is unavailing. As OAG asserts, each submission of an SFC after July 13, 2014, constituted a separate fraudulent act. Indeed, each submission of a financial document to a third-party lender or insurer would "requir[e] a separate exercise of judgment and authority," triggering a new claim. Yin Shin Leung Charitable Found. v Seng, 177 AD3d 463, 464 (1st Dept 2019) (finding continuous series of wrongs each of which gave rise to its own claim).

Defendants mistakenly assert that if a loan agreement was entered into and its proceeds were dispersed prior to the applicable statute of limitations, then a claim arising out of submitting any subsequent contractually required financial documentation is also untimely, irrespective of when that documentation is submitted. Defendants would have this Court apply a bizarre, invented, inverted form of the "relation back" doctrine, pursuant to which if one aspect of fraudulent

business conduct falls outside the statute of limitations, then all subsequent aspects of fraudulent conduct also fall outside the statute, no matter how inextricably intertwined.

Of course, this is contrary to controlling case law, which holds that a cause of action accrues at the time "when one misrepresents a material fact." Graubard Mollen Dannett & Horowitz v Moskovitz, 86 NY2d 112, 12 (1995). Moreover, even the plain language of Executive Law § 63(12) states: "[t]he term 'repeated' as used herein shall include repetition of any *separate and distinct fraudulent or illegal act*" (emphasis added). Clearly, the submission of each separate fraudulent SFC is a distinct fraudulent act.

OAG is not challenging the loans, the closings, or the disbursements; it is challenging defendants' submissions of financial documents containing false and misleading information. Thus, any SFC that was submitted after July 13, 2014, falls within the applicable statute of limitations. CW Capital Cobalt VR Ltd. v CW Capital Invs., LLC, 195 AD3d 12, 19-20 (1st Dept 2021) (each instance of wrongful conduct a "separate, actionable wrong" giving "rise to a new claim").

Materiality

It is settled that a standalone cause of action under Executive Law § 63(12) does not require a demonstration of materiality but merely that an "act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." People v Gen. Elec. Co., 302 AD2d 314, 314-315 (1st Dept 2003) (holding that, unlike GBL § 349, plaintiff need not prove "the challenged act or practice 'was misleading in a material way'").

Although the Domino's court found that "evidence regarding falsity, materiality, reliance and causation plainly is *relevant* to determining whether the Attorney General has established that the challenged conduct has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud" (Domino's at 11), every Appellate Division and the New York Court of Appeals now hold that materiality and scienter are not requirements for liability under § 63(12).

However, as discussed *infra*, although materiality is required under the second through seventh causes of action, it is not required under a standalone cause of action under Executive Law § 63(12), the OAG's first cause of action.

Defendants argue that the SFCs were not materially misleading, claiming, *inter alia* that: (1) "[t]here is no such thing as objective value"; (2) "a substantial difference between valuation in the SOFCs and appraisal, per se, is not evidence of inflated values"; (3) there is nothing improper about using "fixed assets" valuations as opposed to using the current market valuation approach; and (4) it was proper to include "internally developed intangibles, such as the brand premium used in the valuation of President Trump's golf clubs, in personal financial statements." NYSCEF Doc No. 1292 at 20-23.

Thus, defendants essentially argue that value is inherently subjective; that because internal brand valuations are in the eye of the beholder (here, Donald Trump), they cannot be overvalued. Defendants argue that "[n]o bank or underwriter would have reasonably been materially misled by the alleged misstatements or omissions in the SOFCs and other information the Defendants

made available to their counterparties because no sophisticated counterparty would have considered the SOFCs and other information provided by the Defendants alone as material to extend credit or set an interest rate, or issue an insurance policy or price a risk, without doing their own due diligence." NYSCEF Doc. No. 835 at 45.

Defendants also argue: "[i]t follows that if the user [of the SFCs] is in possession of the correct information, then the financial statements are not materially misstated." Id. at 39. Defendants' stance is, practically speaking, that they may submit false SFCs so long as the recipients know, from their own due diligence, that the information is false.

Accepting defendants' premise would require ignoring decades of controlling authority holding that financial statements and real property valuations are to be judged objectively, not subjectively. FMC Corp. v Unmack, 92 NY2d 179, 191 (1998) ("*objectively* reasonable conclusion, drawn by a competent and experience appraiser, was based on credible evidence" that demonstrated "property was overvalued") (emphasis added); Assured Guar. Mun. Corp. v DLJ Mortg. Cap. Inc., 44 Misc 3d 1206(A) (Sup Ct, NY County 2014) ("Credit Suisse is reading this as a subjective standard, dependent on Assured's expectations. Credit Suisse is wrong. It is well settled that this is an objective standard").

Moreover, courts have long found that "generally, it is the 'market value' which provides the most reliable valuation for assessment purposes." Great Atl. & Pac. Tea Co. v Kiernan, 42 NY2d 236, 239 (1977); Consol. Edison Co. of New York v City of New York, 33 AD3d 915, 916 (2d Dept 2007) ("the standard for assessment remains market value"), affd 8 NY3d 591. Beauty may be in the eye of the beholder, but value is in the eye of the marketplace.

Further, defendants' assertion that the discrepancies between their valuations and the OAG's are immaterial is nonsense. What OAG has established, in many cases by clear, indisputable documentary evidence (as discussed *infra*), is not a matter of rounding errors or reasonable experts disagreeing. OAG has submitted conclusive evidence that between 2014 and 2021, defendants overvalued the assets reported in the SFCs between 17.27-38.51%; this amounts to a discrepancy of between $812 million and $2.2 billion dollars. NYSCEF Doc. No. 766 at 70. Even in the world of high finance, this Court cannot endorse a proposition that finds a misstatement of at least $812 million dollars to be "immaterial." Defendants have failed to identify any authority for the notion that discrepancies of the magnitude demonstrated here could be considered immaterial.

The Second through Seventh Causes of Action

The Second, Third, Fourth, Fifth, Sixth, and Seventh causes of action allege violations of Executive Law § 63(12) based on underlying violations of the New York Penal Law prohibiting falsification of business records, issuance of false financial statements, and insurance fraud.

Liability under New York Penal Law § 175.05 (falsifying business records in the second degree) requires that a person "[m]akes or causes a false entry in the business records of an enterprise."

Liability under New York Penal Law § 175.45 (issuing a false financial statement) requires that a person "represents in writing that a written instrument purporting to describe a person's financial

condition or ability to pay as of a prior date is accurate with respect to such person's current financial condition or ability to pay, whereas [that person] knows it is materially inaccurate in that respect."

Liability under New York Penal Law § 176.05 (insurance fraud) requires that a person submitted an application for insurance either: (1) knowing that it "contain[ed] materially false information concerning any fact material thereto"; or (2) "conceal[ed], for the purpose of misleading, information concerning any fact material thereto."

Accordingly, unlike a standalone cause of action under Executive Law § 63(12). the second through seventh causes of action require demonstrating some component of intent and materiality. People v Alamo Rent A Car, Inc., 174 Misc 2d 501, 505 (Sup Ct, NY County 1997) ("As in all other situations requiring *mens rea*, however, petitioners may prove, by reference to facts and circumstances surrounding the case, that respondents knew that their conduct was unlawful. Moreover, petitioners need not prove respondents acted with an 'evil motive, bad purpose or corrupt design'") (internal citations omitted).

OAG has demonstrated that there remain, at the very least, disputed issues of fact as to whether defendants violated these statutes, intentionally and materially. Thus, there are issues of fact as to causes of action two through seven that require a trial.

The Court has considered defendants' remaining arguments and finds them to be unavailing and/or non-dispositive.

Accordingly, defendants' motion for summary judgment dismissing every cause of action is denied in its entirety.

OAG'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ITS FIRST CAUSE OF ACTION

Summary Judgment Burden on Standalone Executive Law § 63(12) Cause of Action

OAG moves for partial summary judgment, seeking to hold defendants liable under OAG's first cause of action, for fraud under Executive Law § 63(12).

As this Court has noted *ad nauseum*, Executive Law § 63(12) "authorizes the Attorney General to bring a special proceeding against any person or business that engages in repeated or persistent fraudulent or illegal conduct, while broadly construing the definition of fraud so as to include acts characterized as dishonest or misleading and eliminating the necessity for proof of an intent to defraud." People v Apple Health & Sports Club, Ltd., Inc., 206 AD2d 266-267 (1st Dept 1994).

As OAG's first cause of action, the only one upon which it moves for summary judgment, alleges a standalone violation of Executive Law § 63(12), OAG need only prove: (1) the SFCs were false and misleading; and (2) the defendants repeatedly or persistently used the SFCs to transact business.

This instant action is essentially a "documents case." As detailed *infra,* the documents here clearly contain fraudulent valuations that defendants used in business, satisfying OAG's burden to establish liability as a matter of law against defendants. Defendants' respond that: the documents do not say what they say; that there is no such thing as "objective" value; and that, essentially, the Court should not believe its own eyes.[9]

The defenses Donald Trump attempts to articulate in his sworn deposition are wholly without basis in law or fact. He claims that if the values of the property have gone up in the years since the SFCs were submitted, then the numbers were not inflated at that time (i.e.; "But you take the 2014 statement, if something is much more valuable now – or, I guess, we'll have to pick a date which was a little short of now. But if something is much more valuable now, then the number that I have down here is a low number"). NYSCEF Doc. No. 1363 at 69-75). He also seems to imply that the numbers cannot be inflated because he could find a "buyer from Saudi Arabia" to pay any price he suggests.[10] Id. at 30-33, 60-62, 79-80.

The Trump Tower Triplex

This Court takes judicial notice that the Trump Tower apartment in which Donald Trump resided for decades (the "Triplex") is 10,996 square feet. NYSCEF Doc. No. 816 at 2. Between 2012-2016, Donald Trump submitted SFCs falsely claiming that the Triplex was 30,000 square feet, resulting in an overvaluation of between $114-207 million dollars. NYSCEF Doc. Nos. 782 at Rows 833-834, 1028, 783 at Rows 799-800, 1199, 784 at Rows 843-844, 785 at Rows 882-883, 789 at Row 913, 817. The misrepresentation continued even after defendants received written notification from *Forbes* that Donald Trump had been overestimating the square footage of the Triplex by a factor of three.[11]

In opposition, defendants absurdly suggest that "the calculation of square footage is a subjective process that could lead to differing results or opinions based on the method employed to conduct the calculation.[12]" NYSCEF Doc. No. 1293 at 20. Well yes, perhaps, if the area is rounded or oddly shaped, it is possible measurements of square footage could come to slightly differing results due to user error. Good-faith measurements could vary by as much as 10-20%, not 200%.

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[9] As Chico Marx, playing Chicolini, says to Margaret Dumont, playing Mrs. Gloria Teasdale, in "Duck Soup," "well, who ya gonna believe, me or your own eyes?"

[10] This statement may suggest influence buying more than savvy investing.

[11] Three days after receiving a written inquiry from *Forbes*, Trump Organization Vice President, Amanda Miller, sent an email to Trump Organization Executive Vice President and Chief Legal Officer, Alan Garten, indicating that she "spoke to Allen W[eisselberg] re: [Trump World Tower and Trump Tower] – we are going to leave those alone." NYSCEF Doc. No. 821. Although OAG need not show intent to deceive under a standalone § 63(12) cause of action, this directive to continue to use a grossly inflated number despite clear knowledge it is false demonstrates the repetitive and ongoing nature of defendants' propensity to engage in fraud.

[12] Despite this assertion in their motion papers, counsel for defendants, Christopher Kise, Esq, conceded during oral argument held on September 22, 2023, that square footage is, in fact, an objective number.

A discrepancy of this order of magnitude, by a real estate developer sizing up his own living space of decades, can only be considered fraud.[13]

OAG unquestionably satisfies its two-prong burden of demonstrating the SFCs from 2012-2016 calculated the value of the Triplex based on a false and misleading square footage, and that some of the defendants repeatedly and persistently used the SFCs to transact business.

Seven Springs Estate

Defendant Seven Springs LLC owns over 200 acres of contiguous land in the towns of Bedford, New Castle and North Castle in Westchester County, New York.

In 2000, non-party the Royal Bank of Pennsylvania appraised the "as is" market value of Seven Springs to be $25 million if converted to residential development. NYSCEF Doc. No. 825. In 2006, the same bank performed a new appraisal, which showed Seven Springs had an "as is" market value of $30 million. NYSCEF Doc. No. 826.

In 2012, Seven Springs LLC received another appraisal that estimated a six-lot subdivision on the New Castle portion of the property to have a fair market value of approximately $700,000 per-lot. NYSCEF Doc. No. 829 at 203-206.

In July 2014, because the Trump Organization was considering donating a conservation easement, it retained Cushman & Wakefield to provide a "range of value" of the Seven Springs property. NYSCEF Doc. Nos. 830, 831. Cushman & Wakefield's appraiser, David McArdle, analyzed the sale of eight lots in Bedford, six lots in New Castle, and ten lots in North Castle and determined the fair market value for all 24 lots was approximately $30 million. NYSCEF Doc. No. 831, 832.

Notwithstanding receiving market values from professional appraisals in 2000, 2006, 2012, and 2014 valuing Seven Springs at or below $30 million, Donald Trump's 2011 SFC reported the value to be $261 million, and his 2012, 2013 and 2014 SFCs reported the value to be $291 million.[14] NYSCEF Doc. Nos. 769, 770, 771, 772.

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[13] In fact, OAG demonstrates that as of 2012, no apartment sold in New York City had ever approached the price at which defendants valued the Triplex, noting that the highest overall sale at that time was $88 million for a Central Park West penthouse. The SFCs valued the Triplex at a staggering $180,000,000-$327,000,000 for the years 2012-2016. NYSCEF Doc. No. 1 at ¶276.

[14] The statutes of limitations have run for all claims that accrued before July 13, 2014. However, although not actionable by themselves, evidence of fraud that predates July 13, 2014, may still be used as evidence in evaluating OAG's request for permanent injunctive relief, wherein the Court must determine whether there has been "a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d 490, 496-97 (2016) (detailing standard for permanent injunctive relief under Executive Law 63(12) and "reject[ing] defendants' arguments that the Attorney General must show irreparable harm in order to obtain a permanent injunction").

In early 2016, Cushman & Wakefield performed another appraisal of Seven Springs, which included the planned development, and determined that as of December 1, 2015, the entire parcel was worth $56.6 million. NYSCEF Doc. Nos. 824 at 9; 875; 876.

Even giving defendants the benefit of the $56.6 million figure as of December 1, 2015, the value submitted on Donald Trump's 2014 SFC was inflated by over 400%. Accordingly, OAG has demonstrated liability for the false 2014 SFC for fraudulently inflating the value of Seven Springs.

Trump Park Avenue

Trump Park Avenue is a residential building included as an asset on Donald Trump's SFCs for the years 2011-2021. NYSCEF Doc. Nos. 769-779. In 2011, 12 of the unsold residential condominium units were subject to New York City's rent regulation laws. NYSCEF Doc. No. 948 at 3. By 2014, nine units remained subject to rent restrictions. NYSCEF Doc. No. 966. By 2020, six units remained subject to rent restrictions. NYSCEF Doc. No. 971.

A 2010 appraisal performed by the Oxford Group valued the 12 rent-stabilized units at $750,000 total, or $62,500 per unit. NYSCEF Doc. No. 952. A 2020 appraisal performed by Newmark Knight Frank valued the six units that remained subject to stabilization at $22,800,090 total, or $3,800,315 per unit. NYSCEF Doc. No. 972.

Notwithstanding, for the years 2014-2021, the Trump Organization submitted SFCs that valued these rent-restricted units as if they were unencumbered, inflating the value of each unit between as much 700% (in 2014) and 64% (in 2021). NYSCEF Doc. Nos. 772-779.

In an unsuccessful attempt to rebut OAG's prima facie demonstration, defendants proffer that the units are not overvalued because "the rent-stabilized units have the potential at some point in the future to be converted into unencumbered (by rent stabilization) units."[15] NYSCEF Doc. No. 1292 at 57. They further concede that "[t]his is the assumption the owner made when assessing potential asset pricing or value." Id.

[15] As every New Yorker knows, rent regulated units may be passed on from one generation to the next in perpetuity.

However, the SFCs are required to state "current" values, not "someday, maybe" values. At the time defendants provided the subject SFCs to third parties they unquestionably falsely inflated the value of the units based on a false premise that they were unrestricted.[16]

40 Wall Street

The Trump Organization, through defendant 40 Wall Street LLC, owns a ground lease at 40 Wall Street and pays ground rent to the landowner.

In 2010, Cushman & Wakefield appraised the Trump Organization's interest in 40 Wall Street at $200 million. NYSCEF Doc. Nos. 878-79. Cushman & Wakefield appraised again in 2011 and 2012, reaching valuations of between $200 and $220 million. NYSCEF Doc. Nos. 881-82. The Trump Organization possessed and was familiar with these appraisals. NYSCEF Doc. Nos. 817 at 135-138; 883.

Despite these appraisals, the 2011 and 2012 SFCs valued the Trump Organization's interest in the property at $524.7 million and $527.2 million, respectively, an overvaluation of more than $300 million each year.[17] NYSCEF Doc. Nos. 769, 770.

In 2015, Cushman & Wakefield once again appraised the property, and valued it at $540 million.[18] NYSCEF Doc. No. 887. Notwithstanding this appraised value, the 2015 SFC listed the value of 40 Wall Street at $735.4 million.[19] NYSCEF Doc. No. 773.

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[16] Mazars accountant Donald Bender testified that when he asked Jeffrey McConney, "Do you have any other appraisals?", Jeffrey McConney stated "I have nothing else," demonstrating an intent to conceal or mislead the accountants. NYSCEF Doc. No. 1262 at 243.

Further, Patrick Birney, a Trump Organization employee working directly under Jeffrey McConney, conceded that the Trump Organization maintained a spreadsheet for day-to-day operations on the Trump Park Avenue offering plan that included both the offering plan prices *and* the current market values, but that the Trump Organization concealed its own actual market estimates from Mazars by omitting the market value column in its spreadsheet and providing Mazars with only the offering plan prices. NYSCEF Doc. No. 946.

[17] Although any liability arising out of the submission of the 2011 and 2012 SFCs is time barred; as previously discussed, these submissions may be considered as evidence in support of OAG's request for injunctive relief.

[18] OAG plausibly asserts that this $540 million is also inflated; however, for purposes of this motion, OAG does not dispute the number, and argues that, even if the Court were to accept defendants' number as accurate, the 2015 SFC was still materially false, as it stated the value as nearly $200 million more than the $540 million appraisal. NYSCEF Doc. No. 766 at n 7.

[19] An email exchange dated August 4, 2014, between Allen Weisselberg and his son, Jack Weisselberg, a Ladder Capital employee, discusses the 2015 $540 million Cushman & Wakefield appraisal. NYSCEF Doc. No. 888. Notwithstanding direct knowledge of it, the 2015 SFC valued 40 Wall Street at nearly $200 million more. NYSCEF Doc. No. 773.

Defendants assert that overvaluations of two hundred million dollars are immaterial, as the "NYAG has produced no evidence to suggest... that Ladder Capital would have been uncomfortable allowing President Trump to guarantee the 40 Wall Street Loan if his net worth was only $1.9 billion, as the NYAG contends." NYSCEF Doc. No. 835 at 48. They further emphasize that "Ladder Capital has received in excess of $40 million in interest and 40 Wall Street LLC has never defaulted under the Loan."[20] Id.

Defendants' argument misses the mark. As has been explained to defendants many times, in many legal proceedings, and in painstaking detail, "where, as here, there is a claim based on fraudulent activity [under Executive Law 63(12)], disgorgement may be available as an equitable remedy, *notwithstanding the absence of loss to individuals or independent claims for restitution.*" Ernst & Young at 569 (emphasis added). Accordingly, it is not significant that the banks made money (or did not lose money)[21], or that they would have done business with the Trump Organization notwithstanding. The law is clear that the only requirements for liability to attach under a standalone Executive Law § 63(12) cause of action are (1) a finding that the SFCs were false and misleading; and (2) that defendants repeatedly or persistently used the SFCs to conduct business.

Accordingly, OAG has demonstrated liability for the false valuation of 40 Wall Street in the 2015 SFC.

Mar-a-Lago

Donald Trump purchased Mar-a-Lago in 1985. In 1993, he sought, and obtained, permission from the Town of Palm Beach to turn the property into a social club (NYSCEF Doc. No. 900), and on August 10, 1993, he entered into a "Declaration of Use Agreement" by which he agreed "the use of Land shall be for a private social club" and that "[a]ny additional uses of the Land shall be subject to approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Landmarks Preservation Commission of the Town, the Architectural Review Commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or any agencies under the foregoing governmental authorities." NYSCEF Doc. No. 915.

In 1995, Donald Trump signed a "Deed of Conservation and Preservation Easement" in which he gave up his right to use Mar-a-Lago for any purpose other than as a social club (the "1995 Deed"). NYSCEF Doc. No. 901. In 2002, Donald Trump signed a "Deed of Development Rights." NYSCEF Doc. No. 902. As part of granting a conversation easement to the National

[20] The defendant borrowers did not default on any loans; but we only know that with hindsight. Markets are volatile, and borrowers come in all shapes and sizes. The next borrower, or the one after that, might default, and if its SFCs are false, the lender might unfairly be left holding the bag. This will distort the lending marketplace and deprive other potential borrowers of the opportunity to obtain loans and create wealth.

[21] The subject loans made the banks lots of money; but the fraudulent SFCs cost the banks lots of money. The less collateral for a loan, the riskier it is, and a first principal of loan accounting is that as risk rises, so do interest rates. Thus, accurate SFCs would have allowed the lenders to make even more money than they did.

Trust for Historic Preservation, Donald Trump agreed that "Trump intend[s] to forever extinguish [his] right to develop or use the Property for any purpose other than club use" (the "2002 Deed"). The 2002 Deed also specifically "limits changes to the Property including, without limitation, the division or subdivision of the Property for any purpose, including use as single family homes, the interior renovation of the mansion, which may be necessary and desirable for the sale of the Property as a single family residential estate, the construction of new buildings and the obstruction of open vistas." Id. In exchange for granting the easement, Mar-a-Lago was taxed at a significantly lower rate (the club rate) than it otherwise would have been (the private home rate). NYSCEF Doc. No. 903.

From 2011-2021, the Palm Beach County Assessor appraised the market value of Mar-a-Lago at between $18 million and $27.6 million. NYSCEF Doc. No. 905.

Notwithstanding, the SFCs' values do not reflect these land use restrictions. Donald Trump's SFCs for 2011-2021 value Mar-a-Lago at between $426,529,614 million and $612,110,496, an overvaluation of *at least 2,300%*, compared to the assessor's appraisal. NYSCEF Doc. Nos. 769-779.

In an attempt to rebut the OAG's demonstration, defendants rely on the opinion affidavit of Lawrence Moens, who they purport is "the most accomplished and knowledgeable ultra-high net worth real estate broker in Palm Beach, Florida."[22] Moens claims that "the SOFC were and are appropriate and indeed *conservative*." NYSCEF Doc. No. 1292 at 35-36 (emphasis added). The Moens' affidavit states in a conclusory fashion that because he believes "this unique property offers to an elite purchaser the unparalleled opportunity to own an exclusive and extensive family compound in the most desirable sections of Palm Beach... the valuations in the SOFC were reasonable and below my estimate for the market value of the property each year." NYSCEF Doc. No. 1435. Moreover, Moens opines that "[i]f Mar-A-Lago was available for sale, I am confident that in short order, I would be in a position to produce a ready, willing and able buyer who would have interest in securing the property for their personal use as a residence, or even, their own club." Id. at 29. Critically, Moens does not opine *at what price* he is "confident" he could find a buyer (although he opines separately, without relying on any objective evidence, that he believes that as of 2023 the property is worth $1.51 *billion*[23]).

It is well-settled that: "[w]here the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation, however, the opinion should be given no probative force and is insufficient to withstand summary judgment." Diaz v New York Downtown Hosp., 99 NY2d 542, 544 (2002); see also Gardner v Ethier, 173 AD2d 1002, 1003-4 (3d Dept 1991) ("the expert

[22] At oral argument, his domain of expertise was enlarged to nationwide status.

[23] In his sworn deposition, when asked "[w]ho were the dozen or so [qualified] buyers that you were referencing in your report, Lawrence Moens replied: "I could dream up anyone from Elon Musk to Bill Gates and everyone in between. Kings, emperors, heads of state. But with net worths in the multiple billions. I don't know how many people in the world have a net worth of more than $10 billion, but I think it's quite a number. There are a lot." NYSCEF Doc. No. 1428 at 184-185. Obviously, this Court cannot consider an "expert affidavit" that is based on unexplained and unsubstantiated "dream[s]."

affidavit is also inadmissible because it is conclusory and the views are apparently based to a great extent on hearsay statements from unspecified witnesses as well as upon speculations on the part of the expert"). Accordingly, defendants' reliance on the Moens affidavit is unpersuasive and certainly insufficient to rebut OAG's prima face case.

Defendants further imply that they may ignore the plain language of the 2002 Deed restrictions because they would likely be able to use the Florida judicial system to get out of their contractual requirements; they further assert that because they may successfully breach their contract in the future, they were not required to consider the restrictions of the 2002 Deed when valuing the property. NYSCEF Doc. 1292 at 48-51. This argument is wholly without merit. At the time in which the defendants submitted the SFCs, the restrictions were in effect, and any valuations represented to third-parties must have incorporated those restrictions; failure to do so is fraud. Assets values that disregard applicable legal restrictions are by definition materially false and misleading.

Accordingly, OAG has demonstrated liability for the false valuation of Mar-a-Lago as appears in the SFCs from 2014-2021.

Aberdeen

The Trump Organization owns a golf course located in Aberdeen, Scotland ("Aberdeen"). The value assigned to Aberdeen was comprised of two parts: a value for the golf course and a value for the development of the non-golf course property, the latter of which is the focus here. Developing any of the non-golf course property required that the local Scottish authorities approve any proposed plans.

From 2011-2014, Donald Trump's SFC reported that he had "received outline planning permission [from local Scottish authorities] in December 2008 for... a residential village consisting of 950 holiday homes and 500 single family residences and 36 golf villas." NYSCEF Doc. Nos. 769-776.

The Trump Organization had "outline planning permission" to build a total of 1,486 homes. Notwithstanding, the 2014-2018 SFCs valuations of Aberdeen assumed the Trump Organization had received approval to build 2,500 homes, despite never having received such approval. NYSCEF Doc. Nos. 772-776, 907.

Additionally, the approval of the 950 holiday homes and 36 golf villas came with severe restrictions on their use: they could be used solely as rental properties and could be rented for no more than 12 weeks in any calendar year. NYSCEF Doc. No. 908 at 13. The Trump Organization submitted financial documentation to the local Scottish authorities representing that these short-term rentals would not be profitable and therefore would not add any value to Aberdeen. NYSCEF Doc. Nos. 909 at 36, 910 at 7. Consequently, the only profitable development of Aberdeen would have been the 500 single family residences. In July 2017, non-party Ryden LLP, acting on behalf of the Trump Organization, prepared a development appraisal for Aberdeen wherein it assessed the profit from developing 557 homes and estimated profits in the range of £16,525,000-£18,546,000. NYSCEF Doc. No. 1231 at 10.

In May 2018, the Trump Organization applied to the Aberdeen City Council to reduce the scope of the development project to 550 dwellings, consisting of 500 private residences, 50 leisure/resorts units, and zero holiday homes (having determined they were not profitable). NYSCEF Doc. No. 911. In September 2019, the Aberdeen City Council approved the proposal for a reduction in the proposed development, but restricted the 50 leisure/resort units, as they had the holiday homes, to be "occupied on a holiday letting or fractional ownership basis only and for no other purposes whatsoever including use as a permanent residential unit... ." NYSCEF Doc. No. 907 at 7.

Notwithstanding, the 2019 SFC, finalized a month after the latest approval, derived a value based on the assumption that 2,035 private residential homes could be developed. Adjusting the values to reflect the permissible 500 private residences reduces the value of the Aberdeen undeveloped property as reflected in the 2019 SFC by £164,196.704. NYSCEF Doc. No. 777 at 16, 789 at Cells G561-619, 912.

Although defendants wholly fail to address Aberdeen in any of their three memos of law, in their response to OAG's statement of material facts, they state that "Defendants dispute the veracity of the appraisal because President Trump, as a land developer, took optimistic views of potential future value which is not contemplated in the appraisal, thereby undervaluing Trump Aberdeen." NYSCEF Doc. No. 1293 at 82-83. For all the reasons discussed *supra*, this defense fails.

Accordingly, OAG has demonstrated liability for the false valuation of Aberdeen as appears in the SFCs from 2014-2019.

US Golf Clubs

Donald Trump owns or leases a number of golf clubs across the United States and abroad that are included as assets on his SFCs. NYSCEF Doc. Nos. 769-779. The value for these golf clubs is provided in the aggregate in the SFCs, although supporting accounting spreadsheets evidence the breakdown of the values assigned to each club. NYSCEF Doc. Nos. 781-791.

The "Trump Brand Premium"

The evidence indicates that for the years 2013-2020, the SFCs relied on values that included a 15% or 30% "premium" based on the "Trump brand" for the following seven golf clubs: Trump National Golf Course ("TNGC") Jupiter, TNGC LA, TNGC Colts Neck, TNGC Philadelphia, TNGC DC, TNGC Charlotte, and TNGC Hudson Valley. NYSCEF Doc. Nos. 783-790. However, the SFCs for those years (and, indeed, all the years before this Court), also contained express language stating: "The goodwill attached to the Trump name has significant value that has *not* been reflected in the preparation of this financial statement." NYSCEF Doc. Nos. 769-779 (emphasis added). Accordingly, the SFCs "double dip," both purporting not to include a brand premium while simultaneously including one of 15% or 30%.

In opposition, defendants submit the affidavit of Eli Bartov, an accounting professor at New York University, who distinguishes between overall brand value and brand value ascribed to individual golf courses. His point, ensconced in numerous lines of academic jargon, seems to be that defendants said that they were eschewing the former and opting only for the latter. NYSCEF Doc. No. 1378 at 14-15. This is a red herring and factually incorrect. The SFCs

clearly state that they do not include a brand value for *any* of the properties included in the SFCs; indeed, the SFCs emphatically declare that "[t]he goodwill attached to the Trump name has significant financial value *that has not been reflected in the preparation of this financial statement.*" NYSCEF Doc. Nos. 769-779 (emphasis added). Perhaps Donald Trump could have ascribed a brand value to golf courses that he viewed as "special," but he was obligated to disclose those exceptions when he represented that the SFCs did not reflect his brand value.

TNGC Briarcliff and TNGC LA

The valuations of TNGC Briarcliff and TNGC LA were each comprised of a value for the golf course and a value for the undeveloped land. As the Trump Organization was considering donating a conservation easement over both properties, they had both properties appraised.

An April 2014 appraisal valued the golf club portion of TNGC Briarcliff at $16,500,000; later that same year, Donald Trump valued the golf club portion of TNGC Briarcliff at $73,430,217, *an inflation of more than 300%*, in his SFC. NYSCEF Doc. Nos. 923 at 147; 785 at Row 257. A 2015 appraisal valued the golf club portion of TNGC LA at $16,000,000 as of December 26, 2014; the 2015 SFC valued the golf club portion of TNGC LA at $56,615,895, *an inflation of more than 200%.* NYSCEF Doc. Nos. 924 at 151; 785 at Row 386.

In an attempt to rebut this strong showing of fraud, defendants argue that they were not obligated to use market value, but, instead, were permitted to use the "fixed assets" approach to valuation, pursuant to which defendants may "value" a property by aggregating the money spent to acquire and maintain a property. NYSCEF Doc. No. 1292. They further rely on the Bartov affidavit, which states, in wholly conclusory fashion that: "[t]he assertion that 'Using fixed assets approach does not present the golf clubs at their estimated current value because the approach ignores market conditions and the behavior of informed buyers and sellers' is unsubstantiated and false." NYSCEF Doc. No. 1378 at 29.

Bartov is incorrect. Each of the corresponding SFCs include representations that "[a]ssets are stated at their estimated current values..." NYSCEF Doc. Nos. 769-779.[24] Accordingly, it is false and misleading to use a fixed-assets evaluation, which is completely different. The price for which you purchase property is not necessarily the price for which you can sell it. The latter, not the former, matters to lenders who want adequate collateral.

The Membership Liabilities

As part of the purchase of several of the golf club properties, Donald Trump agreed to assume the obligation to pay back refundable non-interest-bearing long-term membership deposits. However, notwithstanding that these liabilities must be satisfied in the future, the SFCs from 2012-2021 value them at $0. NYSCEF Doc. Nos. 769-779. This is false; they are a liability in the millions of dollars.

[24] In their response to OAG's statement of material facts, defendants concede that "GAAP defines Estimated Current Value as 'the amount at which the item could be exchanged between a buyer and seller, each of whom is well informed and willing, and neither of whom is compelled to buy or sell." NYSCEF Doc No. 1293 at 17.

However, the SFCs all state: "The fact that Mr. Trump will have the use of these funds for that period without cost and that the source of repayment will most likely be a replacement membership has led him to value this liability at zero." See e.g., NYCSCEF Doc. No. 772.

Although it was false to report the membership liabilities as $0, it was not, under the circumstances, *misleading*, as the SFCs state that the reason for so doing. Accordingly, OAG cannot prevail on liability as a result of the failure to report the membership liabilities.

Yet, as discussed *supra*, OAG has demonstrated liability for submitting fraudulent SFCs in 2014-2020 that falsely value the aforementioned US Golf Clubs based on undisclosed brand premiums and failure to report "current" values.

Vornado Partnership Properties

Donald Trump has a 30% limited partnership interest with non-party Vornado Realty Trust in entities that own office buildings in New York City (at 1290 Avenue of the Americas, hereinafter "1290 AOA") and San Francisco at 555 California Street.

Cash/Liquid Classification

Donald Trump's 30% limited partnership stake does not permit him to use or withdraw funds held by the partnerships. NYSCEF Doc. Nos. 916, 917. Notwithstanding, Donald Trump and his trustees classified his 30% interest in the Vornado partnership as a liquid/cash asset on his SFCs for the years 2013-2021. NYSCEF Doc. No. 771-779. This was even though it is "undisputed" by defendants that Donald Trump does not have "the right to use or withdraw [these] funds." NYSCEF Doc. No. 1293 at ¶387-388.

Defendants assert that "[e]ven if the cash held in the partnership was misclassified and should have been reported elsewhere on the SOFCs as an asset (e.g., in the value of the partnership interest), it would not have inflated the total value of cash or President Trump's net worth reported on the SOFCs." NYSCEF Doc No. 1292 at 39.

This argument does not hold any water. Put simply, it was false and misleading for defendants to indicate that it had access to between $14,221,800 and $93,126,589 in liquid assets, sometimes nearly a third of the total cash it claimed, when in fact those assets were completely illiquid. NYSCEF Doc. No. 1293 ¶ 403.

The Appraisals

Cushman & Wakefield appraised the value of 1290 AOA at $2 billion as of November 1, 2012, and $2.3 billion as of November 1, 2016. NYSCEF Doc. No. 919 at 5-6.

However, Donald Trump's 2014 SFC calculated his 30% share based on a purported value of $3,078,338,462; his 2015 SFC was based on a purported value of $2,985,819,936; and his 2016 SFC was based on a purported value of $3,055,000,000. NYSCEF Doc. Nos. 784 at Rows 709-715, 785 at Rows 748-755, 785 at Rows 779-784. This resulted in overvaluations of Donald Trump's 30% interest in 1290 AOA of between $205-$233 million dollars for those years.

CBRE appraised 1290 AOA and determined its value at $2 billion as of October 7, 2021. NYSCEF Doc. No. 947. Nonetheless, the 2021 SFC was calculated based upon a purported value of $2,574,813,800, an overvaluation of Donald Trump's 30% share by $172 million dollars. NYSCEF Doc. No. 791 at Row 918.

The instant motions do not task this Court with determining which appraisals are the most accurate, which would present issues of fact.[25] Rather, time and time again, the Court is not comparing one appraisal to another; it is comparing an independent professional appraisal to a pie-in-the-sky dream of concocted potential.

Accordingly, OAG has demonstrated liability for submitting fraudulent SFCs overvaluing Donald Trump's interest in the Vornado partnership in 2014-2016 and 2021.

Licensing Deals

Each of Donald Trump's SFCs from 2011-2021 has an asset category entitled "Real Estate Licensing Deals," which the SFC represents is value derived from "associations with others for the purpose of developing and managing properties" and the "cash flow that is expected to be derived... from these associations as their potential is realized." NYSCEF Doc. Nos. 769-779. The SFCs further state that "[i]n preparing [these] assessment[s], Mr. Trump and his management considered only situations which have evolved to the point where signed arrangements with the other parties exist and fees and other compensation which he will earn are reasonably quantifiable." Id.

Despite this express language, the SFCs from 2014-2018 and 2020-2021 include valuations of intra-organization deals, all between entities under the Trump Organization umbrella, in this category of assets. NYSCEF Doc. Nos. 1014, 1018, 1019, 1021, 1023, 1024, 1062, 1063, 1064. It was flatly false and misleading to include values of deals between Trump Organization entities while expressly representing in the SFCs that such assets included only valuations derived from "association with others." Improperly including these intra-organization deals resulted in an overvaluation of up to $224 million in 2014, $110 million in 2015, $120 million in 2016, $113 million in 2017, $115 million in 2018, $97 million in 2020, and $106 million in 2021. Id.

OAG has demonstrated liability for the false and misleading valuation of intra-company licensing deals on the SFCs from 2014-2018 and 2020-2021.

The Other Loans

OAG has established that defendants submitted false SFCs after July 13, 2014, pursuant to their other loan commitments. Defendants submitted SFCs to Deutsche Bank as part of their contractual obligations arising out of three different loans: (1) a Chicago Loan, undertaken by 401 North Wabash Venture LLC; (2) a Doral Loan, undertaken by Trump Endeavor LLC; and (3) an Old Post Office Loan, undertaken by Trump Old Post Office LLC. Defendants certified the accuracy of these SFCs to Deutsche Bank for the years 2014-2019 and 2021[26] as part of their

[25] Nor is this Court asked to determine Donald Trump's total wealth.

[26] The gap for 2020 may have been due to the COVID-19 pandemic.

contractual obligations. NYSCEF Doc. Nos. 1097, 1098, 1099, 1100, 1102, 1104, 1106, 1124, 1126, 1155, 1156, 1157.

The Individual Defendants

OAG has demonstrated liability on behalf of all the named individual defendants: (1) **Donald Trump**, as each and every SFC was issued on behalf of "Donald J. Trump"; (2) **Donald Trump, Jr.**, who, along with Allen Weisselberg, certified the accuracy of the SFCs for 2016-2020, and who singlehandedly certified the accuracy of the 2021 SFC (NYSCEF Docs. No. 808-813); (3) **Eric Trump**, who is the listed source for the Seven Springs valuation in 2014,[27] and who signed several guarantor compliance certificates in 2020 and 2021 for Donald J. Trump (NYSCEF Doc. No. 802); (4) **Allen Weisselberg**, who certified the accuracy of the SFCs from 2014-2021 (NYSCEF Doc. Nos. 806-812); (5) and **Jeffrey McConney**, who led the process of preparing all the SFCs since the 1990s[28] (NYSCEF Doc. No. 822 at 52-68).

The Entity Defendants

It is settled law that "[a] parent corporation will not be held liable for the torts or obligations of a subsidiary *unless it can be shown that the parent exercised complete dominion and control over the subsidiary*." Potash v Port Auth. of New York & New Jersey, 279 AD2d 562, 562 (2d Dept 2001) (emphasis added). Here, it is undisputed that Donald Trump, through one corporate form or another, exercised complete control over the umbrella of entities operating in furtherance of, or on behalf of, "the Trump Organization."

Defendants do not dispute that DJT Holdings LLC and DJT Holdings Managing Member LLC are entities that sit at the top of the Trump Organization's organizational chart and together own many of the Trump-affiliated entities that comprise the Trump Organization. DJT Holdings Managing Member LLC owns 100% of the Trump Organization and DJT Holdings LLC owns 100% of the Trump Organization LLC. NYSCEF Doc. Nos. 4, 819 at ¶1.

Accordingly, OAG has established liability on behalf of all the named entity defendants: (1) **The Trump Organization Inc.**, **the Trump Organization LLC**, **DJT Holdings LLC**, and **DJT Holdings Managing Member LLC**, as each participated in the preparation, submission and certification of the SFCs after July 13, 2014 through the acts of the individual defendants as described *supra*; (2) the **DJT Revocable Trust**, as both Donald Trump Jr. and Allen Weisselberg certified the accuracy of the 2016-2019 SFCs in their capacities as "Trustee, the Donald J. Trump Revocable Trust dated April 7, 2014, as amended" (NYSCEF Doc. No. 808); (3) **Trump Endeavor LLC**, which was the borrower on the Doral Loan, for which SFCs were submitted after July 13, 2014; (4) **401 North Wabash Venture LLC**, which was the borrower on a loan for "Trump Chicago," under which SFCs were required to be (and were) submitted

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[27] Eric Trump also reaffirmed the SFCs accuracy on July 9, 2019. NYSCEF Doc. Nos. 782 at Row 679, 783 at Rows 638-40, 784 at Row 660, 1183.

[28] Jeffrey McConney acknowledged his personal role in preparing supporting data for Donald Trump's SFCs beginning in 2011, testifying that: "I assemble the documentation" and that he would send both supporting data spreadsheets and backup documentation to the accountants. He further conceded that the supporting data spreadsheets were referred to as "Jeff's supporting data" or "Jeff's supporting schedule." NYSCEF Doc. No. 822 at 40, 67-68, 212, 294.

after July 13, 2014; (5) **Trump Old Post Office LLC**, as it was the borrower on the "Old Post Office" loan, under which SFCs were required to be (and were) submitted after July 13, 2014; and **Seven Springs LLC**, the borrowing entity (as described *supra*) under which SFCs were required to be (and were) submitted after July 13, 2014.

Injunctive Relief

OAG has prevailed on liability on its first cause of action pursuant to Executive Law § 63(12) as against all defendants: Donald J. Trump; Donald Trump, Jr.; Eric Trump; Allen Weisselberg; Jeffrey McConney; the DJT Revocable Trust; the Trump Organization Inc; the Trump Organization LLC; DJT Holdings LLC; DJT Holdings Managing Member LLC; Trump Endeavor 12 LLC; 401 North Wabash Venture LLC; Trump Old Post Office LLC; 40 Wall Street LLC; and Seven Springs LLC.

If liability is established under Executive Law § 63(12), the statute itself provides that the attorney general may obtain "an order enjoining the continuance of such business activity or of any fraudulent or illegal acts... and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of ... section one hundred thirty of the general business law...."

"[T]he Attorney General may obtain permanent injunctive relief under... Executive Law § 63(12) upon a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d at 496-97 (further stating "[t]his is not a 'run of the mill' action for an injunction, but rather one authorized by remedial legislation, brought by the Attorney-General on behalf of the People of the State and for the purposes of preventing fraud and defeating exploitation") (internal citations omitted).

Having found, at the commencement of the action, that OAG had preliminarily demonstrated defendants' "propensity to engage in persistent fraud," this Court appointed the Hon. Barbara S. Jones (ret.) as an independent monitor "to ensure there is no further fraud or illegality that violates § 63(12) pending the final disposition of this action." NYSCEF Doc. No. 194. On August 3, 2023, Judge Jones reported as follows:

> [S]ince my appointment I have reviewed material financial and accounting information submitted by the Trump Organization. As part of my review, I have made preliminary observations regarding certain current financial disclosures with respect to the Trump Organization's reporting of financial information. Specifically, I have observed that information regarding certain material liabilities provided to lenders – such as intercompany loans between or among Trust entities and Donald J. Trump, certain of the Trust's contingent liabilities, as well as refundable golf club membership deposits—has been incomplete. The Trust also has not consistently provided all required annual and quarterly certifications attesting to the accuracy of certain financial statements.

> In addition, annual audited financial statements for certain entities, prepared by an external accounting firm, list depreciation expenses. However, interim internally prepared financial statements provided to third parties for these same entities inconsistently report depreciation expenses.

NYSCEF Doc. No. 647. Even with a preliminary injunction in place, and with an independent monitor overseeing their compliance, defendants have continued to disseminate false and misleading information while conducting business. This ongoing flouting of this Court's prior order, combined with the persistent nature of the false SFCs year after year, have demonstrated the necessity of canceling the certificates filed under GBL § 130, as the statute provides. People v Northern Leasing, 70 Misc 3d 256, 279-80 (Sup Ct, NY County 2020) (denying a trial on the petition and ordering the LLC respondents to dissolve upon a finding of persistent fraud under Executive Law § 63(12)).

Having prevailed on liability on a standalone Executive Law § 63(12) cause of action, the Attorney General is entitled to the first two prayers for relief sought in her complaint: (1) canceling any certificate filed under and by virtue of the provisions of New York General Business Law § 130 for all the entity defendants found liable, as well as any other entity controlled or beneficially owned by the individual defendants found liable herein, which and who participated in or benefitted from the foregoing fraudulent schemes; and (2) appointing an independent monitor to oversee compliance, financial reporting, valuations, and disclosures to lenders, insurers, and tax authorities at the Trump Organization. NYSCEF Doc. No. 1 at 213.

Remaining Issues to be Determined at Trial

Anything presented in the parties' moving papers that this Court has not ruled upon in this Decision and Order, including determinations on liability for the second through seventh causes of action, the amount of disgorgement of profits to which OAG is entitled, and determinations on the third through ninth prayers for relief sought by OAG in its complaint, presents disputed issues of fact that shall proceed to trial.

Conclusion

For the reasons stated herein, it is hereby

ORDERED that defendants' motion for summary judgment is denied; and it is further

ORDERED that plaintiff's motion for sanctions is granted in part, to the extent of sanctioning Michael Madaio, Esq. (Habba Madaio & Associates, LLP), Clifford S. Robert, Esq. (Robert & Robert PLLC), Michael Farina Esq. (Robert & Robert PLLC), Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC), and Armen Morian (Morian Law PLLC) in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Decision and Order; and it is further

ORDERED that plaintiff's motion for partial summary judgment on its first cause of action is granted in part, to the extent of finding defendants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, the DJT Revocable Trust, the Trump Organization Inc, the Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC to be liable as a matter of law for persistent violations of Executive Law § 63(12); and it is further

ORDERED that any certificates filed under and by virtue of GBL § 130 by any of the entity defendants or by any other entity controlled or beneficially owned by Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney are canceled; and it is further

ORDERED that within 10 days of the date of this order, the parties are directed to recommend the names of no more than three potential independent receivers to manage the dissolution of the canceled LLCs; and it is further

ORDERED that the Hon. Barbara S. Jones (ret.) shall continue to serve as an independent monitor of the Trump Organization until further Court order; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

9/26/2023
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[X]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

vs.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC,

Defendants.

Index No. 452564/2022

AFFIRMATION OF SERVICE

Motion Seq. No. 028

CHRIS D. KRIMITSOS, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms the following statements to be true under the penalty of perjury:

1. I am an associate of the law firm of Robert & Robert PLLC, and am not a party to the above-captioned action.

2. On October 23, 2023, I served the within Notice of Appeal and Informational Statement, both dated October 23, 2023, together with a copy of the Decision and Order of the Supreme Court of the State of New York, New York County (Honorable Arthur F. Engoron, J.S.C.), dated September 26, 2023, with Notice of Entry, upon the following parties, at the addresses listed after each party's name, by depositing a true copy of same enclosed in a postpaid

properly addressed wrapper in official deposit under the exclusive care and custody of the United States Postal Service within the State of New York:

Kevin C. Wallace, Esq.
Colleen K. Faherty, Esq.
Office of the New York State Attorney General
28 Liberty Street
New York, New York 10005
Counsel for Plaintiff

Alina Habba, Esq.
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Habba Madaio & Associates, LLP
112 West 34th Street, 17th & 18th Floors
New York, New York 10120
Counsel for Defendants Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

Christopher M. Kise, Esq.
(*Admitted Pro Hac Vice*)
Continental PLLC
101 North Monroe Street, Suite 750
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Counsel for Defendants The Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

Dated: Uniondale, New York
October 23, 2023

Chris D. Krimitsos
CHRIS D. KRIMITSOS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

v.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

Defendants.

Robert & Robert PLLC,

Attorney for Defendants.

Index No: 452564/2022

Engoron, J.S.C.

NOTICE OF APPEAL

Motion Seq. No. 028

PLEASE TAKE NOTICE THAT, pursuant to CPLR §§ 5511 and 5515, Robert & Robert PLLC hereby appeals to the Appellate Division, First Department, from the Decision and Order on Motion by Hon. Arthur F. Engoron, J.S.C., dated September 26, 2023 (NYSCEF Doc. No. 1533), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on September 27, 2023, and served by Notice of Entry on September 27, 2023, which granted Plaintiff's motion for sanctions.

This appeal is taken from each and every part of the Order insofar as Robert & Robert PLLC is aggrieved. A copy of the Informational Statement pursuant to 22 NYCRR 1250.3(a) is attached hereto as Exhibit A.

Dated: New York, New York
October 23, 2023

Respectfully submitted,

CLIFFORD S. ROBERT
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-and-

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Attorneys for Non-Party
Robert & Robert PLLC

EXHIBIT “A”

Supreme Court of the State of New York
Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

- against -

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC.,THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type

- ☒ Civil Action
- ☐ CPLR article 75 Arbitration
- ☐ Action Commenced under CPLR 214-g
- ☐ CPLR article 78 Proceeding
- ☐ Special Proceeding Other
- ☐ Habeas Corpus Proceeding

Filing Type

- ☒ Appeal
- ☐ Original Proceedings
  - ☐ CPLR Article 78
  - ☐ Eminent Domain
  - ☐ Labor Law 220 or 220-b
  - ☐ Public Officers Law § 36
  - ☐ Real Property Tax Law § 1278
- ☐ Transferred Proceeding
  - ☐ CPLR Article 78
  - ☐ Executive Law § 298
- ☐ CPLR 5704 Review

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

☐ Administrative Review	☒ Business Relationships	☒ Commercial	☐ Contracts
☐ Declaratory Judgment	☐ Domestic Relations	☐ Election Law	☐ Estate Matters
☐ Family Court	☐ Mortgage Foreclosure	☐ Miscellaneous	☐ Prisoner Discipline & Parole
☐ Real Property (other than foreclosure)	☒ Statutory	☐ Taxation	☐ Torts

Appeal

Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

☐ Amended Decree	☐ Determination	■ Order	☐ Resettled Order
☐ Amended Judgement	☐ Finding	☐ Order & Judgment	☐ Ruling
☐ Amended Order	☐ Interlocutory Decree	☐ Partial Decree	☐ Other (specify):
■ Decision	☐ Interlocutory Judgment	☐ Resettled Decree	
☐ Decree	☐ Judgment	☐ Resettled Judgment	

Court: Supreme Court	County: New York
Dated: 09/26/2023	Entered: 09/27/2023
Judge (name in full): Hon. Arthur F. Engoron	Index No.: 452564/2022
Stage: ■ Interlocutory ☐ Final ☐ Post-Final	Trial: ☐ Yes ■ No If Yes: ☐ Jury ☐ Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? ■ Yes ☐ No

If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

2023-04925

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: ☐ Order to Show Cause ☐ Notice of Petition ☐ Writ of Habeas Corpus	Date Filed:

Statute authorizing commencement of proceeding in the Appellate Division:

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court	County: Choose County
Judge (name in full):	Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Robert & Robert PLLC, appeals from the Decision and Order of Supreme Court, New York County (Hon. Arthur F. Engoron, J.S.C.), dated September 26, 2023 and entered by the Clerk of the Court on September 27, 2023, which granted Plaintiff's motions for sanctions.

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Whether Supreme Court committed errors of law and/or fact, abused its discretion, and/or acted in excess of its jurisdiction by, inter alia, granting Plaintiff's motion for sanctions against Robert & Robert PLLC in the amount of $7,500.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	PEOPLE OF THE STATE OF NEW YORK	Plaintiff	Respondent
2	DONALD J. TRUMP	Defendant	None
3	DONALD TRUMP, JR.	Defendant	None
4	ERIC TRUMP	Defendant	None
5	ALLEN WEISSELBERG	Defendant	None
6	JEFFREY MCCONNEY	Defendant	None
7	THE DONALD J. TRUMP REVOCABLE TRUST	Defendant	None
8	THE TRUMP ORGANIZATION, INC.	Defendant	None
9	THE TRUMP ORGANIZATION LLC	Defendant	None
10	DJT HOLDINGS LLC	Defendant	None
11	DJT HOLDINGS MANAGING MEMBER	Defendant	None
12	TRUMP ENDEAVOR 12 LLC	Defendant	None
13	401 NORTH WABASH VENTURE LLC	Defendant	None
14	TRUMP OLD POST OFFICE LLC	Defendant	None
15	40 WALL STREET LLC	Defendant	None
16	SEVEN SPRINGS LLC	Defendant	None
17	Robert & Robert PLLC	Petitioner	Appellant
18			
19			
20			

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Kevin C. Wallace, Esq. and Colleen K. Faherty, Esq., Office of the New York State Attorney General			
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City: New York	State: New York	Zip: 10005	Telephone No: 212-416-6046
E-mail Address: kevin.wallace@ag.ny.gov; colleen.faherty@ag.ny.gov			
Attorney Type: ☐ Retained ☐ Assigned ■ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 1			
Attorney/Firm Name: Alina Habba, Esq. and Michael Madaio, Esq., Habba Madaio & Associates, LLP			
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Party or Parties Represented (set forth party number(s) from table above):			

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

-against-

DONALD J. TRUMP, *et al.*,

Defendants.

Index No. 452564/2022

NOTICE OF ENTRY

PLEASE TAKE NOTICE that annexed hereto is a true and correct copy of the Decision and Order of the Honorable Arthur F. Engoron, J.S.C. dated September 26, 2023, on Motion Sequence Numbers 027, 028, and 029 (NYSCEF Nos. 1531, 1532, 1533), filed and entered in the Office of the Clerk of the Supreme Court, New York County on the 27th day of September, 2023.

Dated: New York, New York
September 27, 2023

LETITIA JAMES
Attorney General of the State of New York

By: */s/ Colleen K Faherty*
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Attorney for the People of the State of New York

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON **PART** 37

Justice

----------X

INDEX NO. 452564/2022

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

MOTION DATES 08/30/2023, 08/30/2023, 09/05/2023

Plaintiff,

MOTION SEQ. NO. 026, 027, 028

- v -

DONALD J. TRUMP, DONALD TRUMP JR, ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

DECISION + ORDER ON MOTIONS

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 026) 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1292, 1293, 1294, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415,

1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1442, 1443, 1444, 1445, 1446, 1447

were read on this motion for PARTIAL SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 027) 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1474

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 028) 1263, 1264, 1265, 1276, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473

were read on this motion for SANCTIONS.

Upon the foregoing documents, it is hereby ordered that defendants' motion for summary judgment is denied, plaintiff's motion for partial summary judgment is granted in part, and plaintiff's motion for sanctions is granted in part, all as detailed herein.

This action arises out of a years-long investigation that plaintiff, the Office of the Attorney General of the State of New York ("OAG"), conducted into certain business practices that defendants engaged in from 2011 through 2021. OAG alleges that the individual and entity defendants committed repeated and persistent fraud by preparing, certifying, and submitting to lenders and insurers false and misleading financial statements, thus violating New York Executive Law § 63(12).

Procedural Background

In 2020, OAG commenced a special proceeding seeking to enforce a series of subpoenas against various named defendants and other persons and entities. This Court presided over that proceeding and issued several orders compelling compliance with OAG's subpoenas. See People v The Trump Org., Sup Ct, NY County, Index No. 541685/2020. During that proceeding, OAG and the Trump Organization entered into an agreement, which, broadly speaking, tolled the statute of limitations from November 5, 2020, through May 31, 2022. NYSCEF Doc. No. 1260.

On November 3, 2022, this Court found preliminarily that defendants had a propensity to engage in persistent fraud by submitting false and misleading Statements of Financial Condition ("SFCs") on behalf of defendant Donald J. Trump ("Donald Trump"). NYSCEF Doc. No. 183. Accordingly, the Court granted a preliminary injunction against any further fraud and appointed the Hon. Barbara S. Jones (ret.) as an independent monitor to oversee defendants' financial statements and significant asset transfers. NYSCEF Doc. Nos. 193 and 194.

Defendants moved to dismiss the complaint. In a Decision and Order dated January 6, 2023, this Court denied the motion. NYSCEF Doc. Nos. 453. Defendants appealed, resulting in a January 6, 2023 Order wherein the Appellate Division, First Department modified this Court's order to the extent of: (1) declaring that the "continuing wrong doctrine does not delay or extend [the statute of limitations]"; (2) finding that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and timely against defendants not subject to the tolling agreement if they accrued after February 6, 2016; and (3) dismissing the complaint as against defendant Ivanka Trump on statute of limitations grounds, finding that she was not an employee of the Trump Organization at the time at which the parties entered into the tolling agreement. People v Trump, 217 AD3d 609 (1st Dept 2023).

The Appellate Division declined to dismiss *any* other defendants or *any* causes of action.

Discovery ended on July 28, 2023, and OAG filed a note of issue shortly thereafter. NYSCEF Doc. No. 644. OAG now moves for partial summary judgment on its first cause of action, for fraud under Executive Law § 63(12). NYSCEF Doc. No. 765. Separately, plaintiff now moves, pursuant to 22 NYCRR 130-1.1, to sanction defendants for frivolous motion practice. NYSCEF Doc. No. 1263. Defendants also move for summary judgment, seeking to dismiss the complaint in its entirety. NYSCEF Doc. No. 834.

Executive Law § 63(12)

Executive Law § 63(12) provides, as here pertinent, as follows:

> Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of section four hundred forty of the former penal law or section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper. The word "fraud" or "fraudulent" as used herein shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions. The term "persistent fraud" or "illegality" as used herein shall include continuance or carrying on of any fraudulent or illegal act or conduct. The term "repeated" as used herein shall include repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON ALL CAUSES OF ACTION

Arguments Defendants Raise Again

Standing and Capacity to Sue

Defendants' arguments that OAG has neither capacity nor standing to sue under Executive Law § 63(12), and that the disclaimers of non-party accountants Mazars insulate defendants, invoke the time-loop in the film "Groundhog Day." This Court emphatically rejected these arguments in its preliminary injunction decision and in its dismissal decision, and the First Department affirmed both. Defendants' contention that a different procedural posture mandates a reconsideration, or *a fortiori*, a reversal, is pure sophistry[1].

As this Court and others have made abundantly clear, "[i]t is not disputed that the Attorney General is empowered to sue for violations of [Executive Law § 63(12)]." People v Greenberg, 21 NY3d 439, 446 (2013) (finding Executive Law § 63(12) to be broadly worded anti-fraud device); People v Ford Motor Co., 74 NY2d 495, 502 (1989) ("Executive Law § 63(12) is the procedural route by which the Attorney-General may apply to Supreme Court for an order enjoining repeated illegal or fraudulent acts").

Parens Patriae and Consumer Ambit

Defendants repeat the erroneous argument that the complaint must be dismissed because OAG cannot demonstrate the requirements of a *parens patriae* action, which is one in the public interest. "*Parens patriae* is a common-law standing doctrine that permits the state to commence an action to protect a public interest, like the safety, health or welfare of its citizens." People v Grasso, 11 NY3d 64, 72 at n 4 (2008). Invocation of such doctrine, or its requirements, is not necessary where, as here, the New York legislature has specifically empowered the Attorney General to bring such an action pursuant to Executive Law § 63(12). People v Credit Suisse Sec. (USA) LLC, 31 NY3d 622, 633 (2018) ("it is undisputed that Executive Law § 63(12) gives the Attorney General standing to redress liabilities recognized elsewhere in the law, expanding the scope of available remedies"); People v Trump Entrepreneur Initiative LLC, 137 AD3d 409, 417 (1st Dept 2016) ("[E]ven apart from prevailing authority, the language of the statute itself appears to authorize a cause of action; like similar statutes that authorize causes of action, § 63(12) defines the fraudulent conduct that it prohibits, authorizes the Attorney General to commence an action or proceeding to foreclose that conduct, and specifies the relief, including equitable relief, that the Attorney General may seek").

In any event, even if compliance with the requirements of the *parens patriae* doctrine is necessary, which it is not, OAG has easily satisfied those requirements, as it is well-settled that "[i]n varying contexts, courts have held that a state has a quasi-sovereign interest in protecting the integrity of the marketplace." Grasso at 69 n 4; People v Coventry First LLC, 52 AD3d 345, 346 (1st Dept 2008) ("the claim pursuant to Executive Law § 63(12) constituted proper exercises

[1] Indeed, the Court made this crystal clear in its January 6, 2023 order when it found: "Here, the issues of capacity and standing, are pure issues of law and do not depend on a trial of disputed issues of fact. Simply put, who the instant parties are and what the law says, which determine capacity and standing, are not disputed issues of fact that need to be tried." NYSCEF Doc. No. 453 at 4.

of the State's regulation of businesses within its borders in the interest of securing an honest marketplace"); People v Amazon.com, Inc., 550 F Supp 3d 122, 130-131 (SD NY 2021) ("[T]he State's statutory interest under § 63(12) encompasses the prevention of either 'fraudulent or illegal' business activities. Misconduct that is illegal for reasons other than fraud still implicates the government's interests in guaranteeing a marketplace that adheres to standards of fairness...").

Defendants' rehashed argument that OAG's complaint must be dismissed because it is not designed to protect consumers is unavailing. New York v Feldman, 210 F Supp 2d 294, 299-300 (SD NY 2002) ("[D]efendants' claim that section 63(12) is limited to consumer protection actions is simply incorrect. The New York Attorney General has repeatedly used section 63(12) to secure relief for persons who are not consumers in cases that are not consumer protection actions").

Defendants cite to the trial court decision People v Domino's Pizza, Inc., NY Slip Op 30015(U) (Sup Ct, NY County 2021), which is not binding on this Court, as authority for the proposition that any relief sought here should come in the form of private contract litigation, not "a law enforcement action under a statute designed to address public harm." NYSCEF Doc. No. 835 at 39. However, Domino's is wholly distinguishable from the instant case. There, the Court found that "OAG did not establish that Domino's representations to franchisees... were false, deceptive, or misleading. Accordingly, the Court concludes that OAG has not established that Domino's engaged in conduct that 'tends to deceive or creates an atmosphere conducive to fraud.'" Domino's at 26[2]. Here, as discussed *infra*, OAG demonstrates that defendants repeatedly submitted fraudulent financial documents to obtain financial benefits which otherwise they would not have received.

Defendants glaringly misrepresent the requirements of an Executive Law § 63(12) cause of action. Citing to People v Northern Leasing Sys., Inc., 70 Misc 3d 256, 267 (Sup Ct, NY County 2021), defendants assert that OAG must show "the practice is one likely to mislead a reasonable consumer acting reasonably under the circumstances." NYSCEF Doc. No. 835 at 42. However, the word "consumer" does not appear anywhere in the referenced decision, and defendants' characterization of its holding is inaccurate[3]. Northern Leasing confirms that the "test for fraud under Executive Law § 63(12) is whether an act tends to deceive or creates an environment conducive to fraud." Northern Leasing at 267 (further holding "Executive Law § 63(12) expands fraud to encompass new liability, while including non-statutory fraud claims" and finding that "[a] claim under Executive Law § 63(12) is the exercise of 'the State's regulation of businesses within its borders in the interest of securing an honest marketplace'").

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[2] As the failure to demonstrate false misrepresentations foreclosed the possibility of liability on that issue in Domino's, any commentary about the statute's requirements was pure *dicta*.

[3] Although "consumer" does appear in the First Department's affirmance of Northern Leasing, it does not advance defendants' proposition that Executive Law § 63(12) actions be consumer oriented; it simply reaffirms that "the test for fraud is whether the targeted act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." 193 AD3d 67 (1st Dept 2021). The fact that Northern Leasing challenged actions targeted at consumers does not mean that Executive Law § 63(12) is restricted to such actions.

Non-Party Disclaimers

Defendants, yet again, argue that OAG's complaint must be dismissed because the SFCs contain language, provided by non-party accountants Mazars, that indicate that they have not audited or reviewed the accompanying financial statements and therefore cannot express an opinion as to whether the financial statements comply with Generally Accepted Accounting Principles ("GAAP"). However, as this Court already ruled, these non-party disclaimers do not insulate defendants from liability, as they plainly state that "Donald J. Trump is responsible for the preparation and fair presentation of the financial statement in accordance with accounting principles generally accepted in the United States of America and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the financial statement." NYSCEF Doc. No. 183.

As this Court explained in its November 3, 2022 Decision and Order: "[t]he law is abundantly clear that" using a disclaimer as a defense to a justifiable reliance claim requires proof that: "(1) the disclaimer is made sufficiently specific to the particular type of fact misrepresented or undisclosed; and (2) the alleged misrepresentations or omissions did not concern facts peculiarly within the [defendant's] knowledge." Basis Yield Alpha Fund (Master) v Goldman Sachs Grp., Inc., 115 AD3d 128, 137 (1st Dept 2014) ("a [plaintiff] may not be precluded from claiming reliance on misrepresentation of facts peculiarly within the [defendant's] knowledge"); People v Bull Inv. Grp., Inc., 46 AD2d 25, 29 (3d Dept 1974) ("It has been stated that '[t]he rule is clear that where one party to a transaction has superior knowledge, or means of knowledge not open to both parties alike, he is under a legal obligation to speak and his silence constitutes fraud"). As the SFCs did not particularize the type of fact misrepresented or undisclosed and were unquestionably based on information peculiarly within defendants' knowledge, defendants may not rely on such purported disclaimers as a defense.

In sum, the Mazars disclaimers put the onus for accuracy squarely on defendants' shoulders.

Scienter and "Participation" Requirements

Defendants erroneously claim that Fletcher v Dakota, Inc, 99 AD3d 43, 49 (1st Dept 2012), stands for the proposition that the purported "participation element [of a cause of action under Executive Law § 63(12)] is satisfied where the defendant 'directed, controlled, or ratified the decision that led to plaintiff's injury.'" However, Fletcher is not an Executive Law § 63(12) action, it was brought as a corporate tort; accordingly, is not relevant here.[4] Executive Law § 63(12) is much more than a mere codification of common law fraud.

Defendants also incorrectly rely on Abrahami v UPC Const. Co., 224 AD2d 231, 233 (1st Dept 1996), for the proposition that "[m]erely providing copies of purportedly false financial statements is insufficient." NYSCEF Doc. No. 835 at 55. However, as Abrahami was not brought pursuant to Executive Law § 63(12), its analysis regarding "intent to deceive" is irrelevant. Unlike the situation in Abrahami, where an action is brought pursuant to Executive

[4] In fact, had defendants not cut off the beginning of the sentence they cited, it would be evident on its face that such case is legally irrelevant, as the full sentence reads: "A leading treatise on corporations states that a director may be held individually liable to third parties for a corporate tort if he either participated in the tort or else 'directed, controlled, approved or ratified the decision that led to the plaintiff's injury.'" Fletcher at 49.

Law § 63(12), "good faith or lack of fraudulent intent is not in issue." People v Interstate Tractor Trailer Training, Inc., 66 Misc 2d 678, 682 (Sup Ct, NY County 1971) (holding liability under Executive Law § 63(12) does not require demonstrating an "intent to defraud"); Trump Entrepreneur Initiative at 417 ("fraud under section 63(12) may be established without proof of scienter or reliance"); Bull Inv. Grp. at 27 ("[i]t is well-settled that the definition of fraud under subdivision 12 of section 63 of the Executive Law is extremely broad and proof of scienter is not necessary").

Disgorgement of Profits

In flagrant disregard of prior orders of this Court *and* the First Department, defendants repeat the untenable notion that "disgorgement is unavailable as a matter of law" in Executive Law § 63(12) actions. NYSCEF Doc. No. 835 at 70. This is patently false, as defendants are, or certainly should be, aware that the Appellate Division, First Department made it clear *in this very case* that "[w]e have already held that the failure to allege losses does not require dismissal of a claim for disgorgement under Executive Law § 63(12)." Trump, 217 AD3d at 610.

Defendants nonetheless rely on the trial court decision in People v Direct Revenue, LLC, 19 Misc 3d 1124(A) (Sup Ct, NY County 2008), for the proposition that Executive Law § 63(12) "do[es] no[t] authorize the general disgorgement of profits received from sources other than the public." NYSCEF Doc. No. 835 at 71-72. However, defendants' neglect to mention that Direct Revenue was superseded, and essentially overruled, in 2016 by the New York Court of Appeals in People v Greenberg, which unequivocally held that "disgorgement is an available remedy under the Martin Act and the Executive Law." People v Greenberg, 27 NY3d 490, 497 (2016).

Also fatally flawed is defendants' reliance on People v Frink Am., Inc., 2 AD3d 1379, 1380 (4th Dept 2003), as it relies on the outdated proposition that Executive Law § 63(12) "does not create any new causes of action" and thus, the remedy of disgorgement is unavailable. NYSCEF Doc. No. 835 at 73-74. However, in Trump Entrepreneur Initiative, in which at least three of the instant defendants were parties, the First Department unambiguously declared that "the Attorney General is, in fact, authorized to bring a cause of action for fraud under Executive Law § 63(12)." Trump Entrepreneur Initiative at 418; see also People v Pharmacia Corp., 27 Misc 3d 368, 373 (Sup Ct, NY County 2010) (holding "Executive Law § 63(12) applies to fraudulent conduct actionable at common law, as well as to conduct for which liability arises solely from the statute").

Defendants incorrectly posit that, under People v Ernst & Young, LLP, 114 AD3d 569 (1st Dept 2014), disgorgement is available under the Martin Act but not under Executive Law § 63(12). NYSCEF Doc. No. 836 at 73. This is simply untrue. In Ernst & Young, the First Department specifically held that disgorgement was an available and potentially "crucial" remedy in an Executive Law § 63(12) action. Ernst & Young at 570.

Defendants correctly assert that "the record is devoid of any evidence of default, breach, late payment, or any complaint of harm" and argue that as none of the recipients of the subject SFCs ever lodged a complaint with OAG or otherwise claimed damages, disgorgement of profits would be inappropriate. NYSCEF Doc. No. 835 at 40.

However, that is completely irrelevant. As the Ernst & Young Court noted:

> [W]here, as here, there is a claim based on fraudulent activity, disgorgement may be available as an equitable remedy, notwithstanding the absence of loss to individuals or independent claims for restitution. Disgorgement is distinct from the remedy of restitution because it focuses on the gain to the wrongdoer as opposed to the loss to the victim. Thus, disgorgement aims to deter wrongdoing by preventing the wrongdoer from retaining ill-gotten gains from fraudulent conduct. Accordingly, the remedy of disgorgement does not require a showing or allegation of direct losses to consumers or the public; the source of the ill-gotten gains is "immaterial."

Id. (disgorgement is not impermissible penalty "since the wrongdoer who is deprived of an illicit gain is ideally left in the position he would have been had there been no misconduct") (internal citations omitted); see also Amazon.com at 130 ("Executive Law § 63(12) authorizes the Attorney General to seek injunctive and other relief", and finding "the Attorney General can seek disgorgement of profits on the State's behalf").

Sanctionable Conduct for Frivolous Motion Practice

In response to both OAG's request for a preliminary injunction and to defendants' motions to dismiss, this Court rejected every one of the aforementioned arguments. In rejecting such arguments for the second time, this Court cautioned that "sophisticated counsel should have known better." [5] NYSCEF Doc. No. 453 at 5. However, the Court declined to impose sanctions, believing it had "made its point." Id.

Apparently, the point was not received.

One would not know from reading defendants' papers that this Court has already *twice* ruled against these arguments, called them frivolous, and *twice* been affirmed by the First Department.

"In its discretion, a court may award costs and financial sanctions against an attorney or party resulting from frivolous conduct." Kamen v Diaz-Kamen, 40 AD3d 937, 937 (2d Dept 2007). See Yan v Klein, 35 AD3d 729, 729–30 (2d Dept 2006) ("The plaintiff, following two prior actions, has 'continued to press the same patently meritless claims,' most of which are now barred by the doctrines of res judicata and collateral estoppel").

Defendants' conduct in reiterating these frivolous arguments is egregious. We are way beyond the point of "sophisticated counsel should have known better"; we are at the point of intentional and blatant disregard of controlling authority and law of the case. This Court emphatically rejected these arguments, as did the First Department. Defendants' repetition of them here is indefensible.

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5 The Court even went so far as to caution that the "arguments were borderline frivolous even the first time defendants made them." NYSCEF Doc. No. 453 at 3.

Pursuant to New York Administrative Code § 130-1.1, "[t]he Court, as appropriate, may make such an award of costs or impose such financial sanctions against either an attorney or a party to the litigation or against both." The provision further states that:

> For purposes of this Part, conduct is frivolous if:
>
> (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
>
> (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
>
> (3) it asserts material factual statements that are false.

22 NYCRR 130-1.1(c). Defendants' inscrutable persistence in re-presenting these arguments clearly satisfies the first of these three possible criteria.

When considering imposing sanctions "[a]mong the factors [the court] is directed to consider is whether the conduct was continued when it became apparent, or should have become apparent, that the conduct was frivolous, or when such was brought to the attention of the parties or to counsel." Levy v Carol Mgmt. Corp., 260 AD2d 27, 34 (1st Dept 1999) (further finding that sanctions both "punish past conduct" and "they are goal oriented, in that they are useful in deterring future frivolous conduct").

In its January 6, 2023 Decision and Order, this Court warned defendants that their "reiteration of [these previously rejected arguments] scattered across five different motions to dismis[s] was frivolous." NYSCEF Doc. No. 453 at 3.

In a last-ditch attempt to stave off sanctions, defendants have submitted an affirmation by the Hon. Leonard B. Austin (ret.), who had a supremely distinguished judicial career, culminating in 12 years on the Appellate Division, Second Department. NYSCEF Doc. No. 1449. Justice Austin presents what is essentially a primer on the interplay between motions to dismiss and motions for summary judgment, and every point of law is valid.

However, it is wholly invalid as a reason for this Court to deny sanctions. First, legal arguments are for counsel to make, not for experts to submit. "The rule prohibiting experts from providing their legal opinions or conclusions is 'so well-established that it is often deemed a basic premise or assumption of evidence law—a kind of axiomatic principle.'" In re Initial Pub. Offering Sec. Litig., 174 F Supp 2d 61, 64 (SD NY 2001) (citing Thomas Baker, The Impropriety of Expert Witness Testimony on the Law, 40 U Kan LRev 325, 352 (1992) (precluding "expert affidavits" on the law); accord, Note, Expert Legal Testimony, 97 Harv LRev 797, 797 (1984) ("it remains black-letter law that expert legal testimony is not permissible"). Neither defendants nor Justice Austin has sought permission to file an amicus brief. In their own submissions, defendants have expounded on the law of capacity, standing, disclaimers, motions to dismiss, motions for summary judgment, and sanctions. The heft and prestige of a legal lion adds nothing.

More importantly, the subject affirmation utterly fails to fit the specific facts of this case into the general principles it enunciates. In many situations, discovery, and a complete record, and the reversal of the burden of proof, will turn the tide, requiring that a valid complaint be dismissed because there is no evidence to support it. But standing and capacity are legal questions, not factual issues. Crucially, while defendants have, by their own account, conducted extensive discovery and have created a complete record, they fail to point to a single fact that discovery has uncovered, let alone a single fact in the record, that changes the calculus of their denied and doomed capacity and standing arguments.

Capacity and standing are not esoteric concepts. Infants, legally declared incompetents, and persons under certain legal disabilities are not allowed to sue. The New York Attorney General is none of the above. If my sibling or neighbor is harmed, I do not have standing to sue for his or her injury. Citizens may not sue to prevent governmental actions unless they may suffer some personal harm. Executive Law § 63(12) was promulgated to give the Attorney General standing to sue on behalf of the people of New York to prevent or deter the precise type of fraud here at issue. Arguments to the contrary are risible.

Defendants' arguments that the factual record developed in discovery changed the landscape under which standing should be viewed is legally preposterous. The best that defendants could muster at oral argument was to contend (incorrectly) that plaintiff cannot sue because the subject transactions were between private entities, and nobody lost money. However, that is purely an argument on the merits, not an argument on standing. Taken to its logical extreme, absolutely any time a defendant denies liability, it could move to dismiss on the ground of lack of standing.

Exacerbating defendants' obstreperous conduct is their continued reliance on bogus arguments, in papers and oral argument. In defendants' world: rent regulated apartments are worth the same as unregulated apartments; restricted land is worth the same as unrestricted land; restrictions can evaporate into thin air; a disclaimer by one party casting responsibility on another party exonerates the other party's lies; the Attorney General of the State of New York does not have capacity to sue or standing to sue (never mind all those cases where the Attorney General has sued successfully) under a statute expressly designed to provide that right; all illegal acts are untimely if they stem from one untimely act; and square footage subjective.

That is a fantasy world, not the real world.

There is also a larger context to the sanctions issue. Several defendants are no strangers to sanctions and why courts are sometimes constrained to issue them. In the investigatory special proceeding this Court found Donald Trump in contempt of Court and sanctioned him $10,000 per day for failing to comply with his discovery obligations. This Court lifted the contempt after 11 days. The First Department affirmed the contempt and the fines. People v Trump, 213 AD3d 503, 504 (1st Dept 2023) ("[T]he financial sanction to compel compliance was a proper exercise of the court's discretionary power and was not excessive or otherwise improper, under the particular circumstances").

In Donald J. Trump v Hillary R. Clinton, 22-14102-CV-DMM, ("Order on Motion for Indicative Ruling") (filed September 15, 2023) (SD FL), Judge Donald M. Middlebrooks denied what in

New York legal parlance would be called "a motion to reargue," pursuant to which Donald Trump asked Judge Middlebrooks to vacate sanctions imposed on him and his legal team totaling close to one million dollars. Judge Middlebrooks wrote, on the first page thereof, that "Movants acted in bad faith in bringing this lawsuit and that this case exemplifies Mr. Trump's history of abusing the judicial process.[6]" Id.

Unfortunately, sanctions are the only way to impress upon defendants' attorneys the consequences of engaging in repetitive, frivolous motion practice after this Court, affirmed by the Appellate Division, expressly warned them against doing so. Boye v Rubin & Bailin, LLP, 152 AD3d 1, 11 (1st Dept 2017) ("sanctions serve to deter future frivolous conduct" and their "goals include preventing the waste of judicial resources, and deterring vexatious litigation and dilatory or malicious litigation tactics").

It is of no consequence whether the arguments were made at the direction of the clients or *sua sponte* by the attorneys; counsel are "ethically obligated to withdraw any baseless and false claims, if not upon [their] own review of the record, certainly by the time [the] Supreme Court advised [them] of this fact." Boye at 11 (upholding sanctions against attorneys because "counsel continued to... pursue claims which were completely without merit in law or fact."); see also Nachbaur v Am. Transit Ins. Co., 300 AD2d 74, 75 (1st Dept 2002) (motion court properly sanctioned attorneys for "repetitive and meritless motions"); Leventritt v Eckstein, 206 AD2d 313, 314 (1st Dept 1994) (affirming sanctions imposed on attorney for "repeated pattern of frivolous conduct"); William Stockler & Co. v Heller, 189 AD2d 601, 603 (1st Dept 1993) (affirming sanctions against attorney upon finding "there was no factual or legal basis for defendant's original cross motion, or for the reargument motion, that both motions were 'totally frivolous' and were submitted 'just really to delay'"). Counsel should be the first line of defense against frivolous litigation.

Accordingly, this Court grants OAG's motion for sanctions, in part, to the extent of sanctioning each of defendants' attorneys who signed their names to the instant legal briefs[7], in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Order.

Arguments Defendants Raise for the First Time

Summary Judgment Standard

To prevail on its motion for summary judgment on all causes of action, defendants must first "make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient

[6] One factor Judge Middlebrooks considered was Donald Trump's "disregard for legal principles and precedent." Id. at 14. In short, Donald Trump, and his lawyers, are not sanctions neophytes. This is not their first rodeo.

[7] The following attorneys signed their names to defendants' instant briefs and are, accordingly, sanctioned $7,500 each: Michael Madaio, Esq. (Habba Madaio & Associates, LLP); Clifford S. Robert, Esq. (Robert & Robert PLLC); Michael Farina Esq. (Robert & Robert PLLC); Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC); and Armen Morian (Morian Law PLLC).

evidence to eliminate any material issues of fact from the case." Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 (1985). "Failure [of the movant] to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers." Id. If the defendants make out their prima facie showing, the burden then shifts to plaintiff to offer evidence sufficient to rebut that showing by identifying disputed issues of fact that should go before a trier of fact.

Defendants strenuously argue throughout their briefs that OAG has not met her burden sufficient to defeat defendants' motion for summary judgment. However, defendants misstate the black letter law applicable to summary judgment, citing to City Dental Servs., P.C. v New York Cent. Mut., 34 Misc 3d 127(A) (App Term 2d, 11th, 13th Jud Dists 2011) for the flatly wrong proposition that "in order to defeat summary judgment on these claims of predicate illegality, the NYAG must, with respect to each predicate illegality attached, 'establish[] each element of its cause with respect to those causes of action.'" NYSCEF Doc. No. 835 at 62.

Not only does City Dental not stand for that proposition (it merely found that under the circumstances of that case, plaintiff's evidence failed to meet her burden on summary judgment), but the law is well-settled that "to defeat a motion for summary judgment the opposing party must 'show facts sufficient to require a trial of any issue of fact," not make out its own case. Zuckerman v City of New York, 49 NY2d 557, 562 (1980). While OAG must establish each and every element of its cause(s) of action in order to *prevail* on its own motion for summary judgment, in order to defeat defendants' motion for summary judgment (provided defendants are able to demonstrate a prima facie case) "an opposing party must 'show facts sufficient to require a trial of any issue of fact.'" Guzman v Strab Const. Corp., 228 AD2d 645, 646 (2d Dept 1996) ("evidentiary facts derived from the documents submitted [in opposition to summary judgment motion] are sufficient to present a triable issue of fact").

The "Worthless Clause"

Defendants rely on what they call a "worthless clause" set forth in the SFCs under the section entitled "Basis of Presentation" that reads, as here pertinent, as follows:

> Assets are stated at their estimated current values and liabilities at their estimated current amounts using various valuation methods. Such valuation methods include, but are not limited to, the use of appraisals, capitalization of anticipated earnings, recent sales and offers, and estimates of current values as determined by Mr. Trump in conjunction with his associates and, in some instances, outside professionals. Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates presented herein are not necessarily indicative of the amount that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts.

NYSCEF Doc. Nos. 769 at 7; 770 at 7; 771 at 7; 772 at 7; 773 at 7.

In his sworn deposition, Donald Trump spent a lot of time invoking this clause: "Well, they call it a 'disclaimer.' They call it 'worthless clause' too, because it makes the statement 'worthless.'" NYSCEF Doc. No. 859 at 67. Donald Trump goes on to say that "I have a clause in there that says, don't believe the statement, go out and do your own work. This statement is 'worthless.' It means nothing." Id. at 68. Furthermore, Donald Trump implies that he did not consider it important to review the SFCs for accuracy because of the existence of this purported "worthless clause":

> OAG: Does this refresh your recollection of the process whereby you would get final review of the Statement of Financial Condition?
>
> DJT: Yeah, I think generally. It's interesting. I would say as years went by, I got less and less and then once I became President, I would – if I saw it at all, I'd see it, you know, after it was already done.
>
> OAG: So in the period –
>
> DJT: Again, you know, I hate to be boring and tell you this. When you have the worthless clause on a piece of paper and the first – literally the first page you're reading about how this is a worthless statement from the standpoint of your using it as a bank or whatever –whoever may be using it, you tend not to get overly excited about it. I think it had very little impact, if any impact on the banks.
>
> ....
>
> OAG: So am I understanding that you didn't particularly care about what was in the Statement of Financial Condition?
>
> DJT: I didn't get involved in it very much. I felt it was a meaningless document, other than it was almost a list of my properties, with good faith effort of people trying to put some value down. It was a good faith effort.

Id. at 107-108. Defendants further submit the affidavit and deposition transcript of Robert Unell, who purports to be an expert in commercial real estate, for the proposition that because of "the worthless clause" in the SFC, "no lender relies on these for what it is." NYSCEF Doc. Nos. 1030 at 183-184; 1031.

However, defendants' reliance on these "worthless" disclaimers is worthless. The clause does not use the words "worthless" or "useless" or "ignore" or "disregard" or any similar words. It does not say, "the values herein are what I think the properties will be worth in ten or more years." Indeed, the quoted language uses the word "current" no less than five times, and the word "future" zero times.

Additionally, as discussed *supra*, a defendant may not rely on a disclaimer for misrepresentation of facts peculiarly within the defendant's knowledge. Basis Yield Alpha Fund at 136. Here, as the valuations of the subject properties are, obviously, peculiarly within defendants' knowledge, their reliance on them is to no avail.

Furthermore, "[t]his 'special facts doctrine' applies *regardless of the level of sophistication of the parties*." TIAA Glob. Invs. LLC v One Astoria Square LLC, 127 AD3d 75, 87 (1st Dept 2015) (emphasis added) (holding disclaimer does not bar liability for fraud where facts were peculiarly within disclaiming party's knowledge).

Thus, the "worthless clause" does not say what defendants say it says, does not rise to the level of an enforceable disclaimer, and cannot be used to insulate fraud as to facts peculiarly within defendants' knowledge, even vis-à-vis sophisticated recipients.

The Tolling Agreement

The First Department has declared that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and claims against defendants not subject to the tolling agreement are timely if they accrued after February 6, 2016. Trump, 217 AD3d at 611. Defendants concede that the tolling agreement binds each of the LLC-defendants and the Trump Organization. However, they argue that each of the individual defendants and the Donald J. Trump Revocable Trust (the "DJT Revocable Trust") are not bound by the agreement.

Alan Garten, the Trump Organization's Chief Legal Officer, originally entered into the tolling agreement on behalf of "the Trump Organization" on August 27, 2021; the agreement was extended one time by an amendment dated May 3, 2022. NYSCEF Doc. No. 1260. It tolls the statute of limitations for the period from November 5, 2020, through May 31, 2022. Id. at 2. The agreement contains a footnote to the entity "the Trump Organization" that reads as follows:

> As noted in the December 7, 2019 subpoena issued in this investigation to the Trump Organization, the "Trump Organization" as used herein includes The Trump Organization, Inc; DJT Holdings LLC; DJT Holdings Managing Member LLC; and any predecessors, successors, present or former parents, subsidiaries, and affiliates, whether direct or indirect; and all directors, officers, partners, employees, agents, contractors, consultants, representatives, and attorneys of the foregoing, and any other Persons associated with or acting on behalf of the foregoing, or acting on behalf of any predecessors, successors, or affiliates of the foregoing.

Id. at 4 n 1.

Thus, the tolling agreement at issue here binds "all directors [and] officers" and "present or former parents" of the Trump Organization and its affiliates and subsidiaries. Id. It is undisputed that at the time the tolling agreement was executed, each individual defendant, Donald J. Trump, Donald Trump Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney,

were all directors and/or officers of the Trump Organization. NYSCEF Doc. No. 1293 at ¶¶ 673, 680, 696, 710, 736.

Defendants argue that the non-signatory defendants are not bound by the agreement, citing Highland Crusader Offshore Partners, L.P. v Targeted Delivery Techs. Holdings, Ltd., 184 AD3d 116, 121 (1st Dept 2020), for the "general principal that only the parties to a contract are bound by its terms." NYSCEF Doc. No. 835 at 27. However, defendants fail to quote the following sentence, which provides that "[a] non-signatory may be bound by a contract under certain limited circumstances." Highland at 122. See also Oberon Sec., LLC v Titanic Ent. Holdings LLC, 198 AD3d 602, 603 (1st Dept 2021) (non-signatory companies bound by agreement with language defining signatory to include "all subsidiaries, affiliates, [and] successors").

In People v JUUL Labs, Inc., 212 AD3d 414, 417 (1st Dept 2023), in a case involving nearly identical language in a corporate tolling agreement[8], the First Department recently held that non-signatory corporate affiliates, officers, and directors were bound by the agreement. Similarly, here all the individual defendants are bound by the instant tolling agreement's terms and may be held liable for any claims that accrued after July 13, 2014.

Defendants argue that OAG is judicially estopped from asserting that the agreement binds the individual defendants based on statements OAG's counsel made during oral argument in the investigatory special proceeding. NYSCEF Doc. No. 1292 at 26. Specifically, on April 25, 2022, while seeking to hold Donald Trump in contempt for failing to comply with court orders, OAG's counsel stated: "[t]here is hard prejudice because Donald Trump is not a party to the tolling agreement, that tolling agreement only applies to the Trump Organization." NYSCEF Doc. No. 1041 at 59.

For judicial estoppel to be applicable: "First, the party against whom the estoppel is asserted must have argued an inconsistent position in a prior proceeding; and second, the prior inconsistent position must have been adopted by the court in some manner." Bates v Long Island R. Co., 997 F2d 1028, 1038 (2d Cir 1993).

Defendants are correct that the first prong is satisfied, in that the statements OAG's counsel made during oral argument are inconsistent with the position OAG is now taking. However, defendants cannot demonstrate that this Court adopted the prior position. Indeed, this Court did not need to, and did not, consider the tolling agreement when it issued its April 26, 2022 Decision and Order finding Donald Trump in contempt. See Ghatani v AGH Realty, LLC, 181 AD3d 909, 911 (2d Dept 2020) ("For the doctrine [of judicial estoppel] to apply, there must be a final determination endorsing the party's inconsistent position in the prior proceeding").

This Court has not addressed the tolling agreement until now. Accordingly, defendants cannot demonstrate that this Court adopted OAG's prior inconsistent position.

[8] The substantially similar tolling agreement at issue in Juul can be found under Index No. 452168/2019, NYSCEF Doc. No. 176.

Moreover, "[t]he party asserting estoppel must show with respect to himself: '(1) lack of knowledge of the true facts; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change in his position.'" BWA Corp. v Alltrans Exp. U.S.A., Inc., 112 AD2d 850, 853 (1st Dept 1985). Here, none of the defendants claim that they changed their positions or courses of conduct in reliance upon the statement of OAG's counsel during oral argument.

Finally, while judicial estoppel may be applied to prohibit inconsistent changes in factual positions, courts have declined to extend the doctrine to changes in legal positions. Seneca Nation of Indians v New York, 26 F Supp 2d 555, 565 (WD NY 1998), affd, 178 F3d 95 (2d Cir 1999) (finding "[t]here is no legal authority" for "broadening of the doctrine" to "include seemingly inconsistent legal positions"). Who physically signed the agreement is a question of fact; whom it binds is a question of law.

Defendants' argument that the DJT Revocable Trust is not bound by the tolling agreement falls flat. In his deposition, Donald Trump affirmed under oath that the assets of the Trump Organization are held in the DJT Revocable Trust, for which he is the sole donor and beneficiary. NYSCEF Doc. No. 859 at 21. Donald Trump also affirmed that at the time the trust was formed, he was the sole trustee and remained the sole trustee until 2017, when defendants Allen Weisselberg and Donald Trump, Jr. became the sole trustees. Id. at 20-24.

As every beneficiary, donor, and trustee of the DJT Revocable Trust is a defendant bound by the tolling agreement, and as the trust is unquestionably a "parent" of the Trump Organization, so too does the tolling agreement bind the DJT Revocable Trust. See People v Leasing Expenses Co. LLC, 199 AD3d 521, 522 (1st Dept 2021) ("It may likewise be inferred that the trustees had knowledge of the activities of the businesses they controlled through the trust mechanism. Hence, under Executive Law § 63(12), the family trusts and trustees may likewise be held liable for the fraud"); see e.g., Kurzman v Graham, 12 Misc 3d 586, 590 (Sup Ct, NY County 2006) ("courts will not allow the owner of assets to evade creditors by placing the property in a trust while retaining a right to revoke the trust").

Defendants cite to New York Estates, Powers and Trust Law § 11-1.1(b)(17) for the proposition that only a trustee may bind a trust to an agreement. However, § 11-1.1(b)(17) does not state this; rather, it states:

> (b) In the absence of contrary or limiting provisions in the court order or decree appointing a fiduciary, or in a subsequent order or decree, or in the will, deed or other instrument, every fiduciary is authorized:
>
> ...
>
> (17) To execute and deliver agreements, assignments, bills of sale, contracts, deeds, notes, receipts and any other instrument necessary or appropriate for the administration of the estate or trust.

This provision simply says what a fiduciary is permitted to do in the absence of a contrary provision. It does nothing to advance defendants' argument that *only* a trustee may bind a trust,

particularly since defendants fail to cite to any provision of the DJT Revocable Trust restricting who can bind it, as § 11-1.1(b)(17) anticipates.

Moreover, Korn v Korn, 206 AD3d 529, 530 (1st Dept 2022), upon which defendants inexplicably rely, is irrelevant to the instant analysis, as that case involved an examination by the court as to whether a fiduciary had a right or duty to negotiate on behalf of an estate pursuant to § 11-1.1(b)(13), not pursuant to § 11-1.1(b)(17), to which defendants cite.

Finally, "the Attorney General should not be limited, in [her] duty to protect the public interest, by an... agreement [s]he did not join." People v Coventry First LLC, 13 NY3d 108, 114 (2009) (holding Attorney General not bound by arbitration agreement when pursuing Executive Law § 63(12) claim and finding "[s]uch an arrangement between private parties cannot alter the Attorney General's statutory role or the remedies that [s]he is empowered to seek").

The tolling agreement was a mutually beneficial and common arrangement pursuant to which OAG agreed to hold off suing, and Alan Garten, on behalf of the Trump Organization, agreed to toll the statute of limitations. All defendants received the benefit of the bargain; OAG held off suing. OAG is entitled to its benefit of the bargain, the tolling of the statute of limitations, for the limited agreed-upon time, as against anyone it could have sued for the matters at issue at the time at which the agreement was executed. OAG clearly did not intend to permit defendants' principals to evade the tolling agreement based on a technicality contrary to the spirit of the agreement and controlling caselaw.

Statute of Limitations

As a general rule, statutes of limitation start running when a claim accrues, that is, when it can be sued upon. In arguing that OAG's causes of action are untimely, defendants incorrectly assert that the statute of limitations starts running on the date the parties entered into the subject agreements, or when the loans closed. However, the First Department did not use the word "closed," it used the word "completed." Trump, 217 AD3d at 611. Obviously, the transactions were not "completed" while the defendants were still obligated to, and did, annually submit current SFCs to comply with the terms of the loan agreements.

Defendants further assert that any continuing documentation provided after the agreements were entered into, or when the loans closed, is of no consequence if the proceeds were distributed prior to July 2014. NYSCEF Doc. No. 835 at 18. This argument is unavailing. As OAG asserts, each submission of an SFC after July 13, 2014, constituted a separate fraudulent act. Indeed, each submission of a financial document to a third-party lender or insurer would "requir[e] a separate exercise of judgment and authority," triggering a new claim. Yin Shin Leung Charitable Found. v Seng, 177 AD3d 463, 464 (1st Dept 2019) (finding continuous series of wrongs each of which gave rise to its own claim).

Defendants mistakenly assert that if a loan agreement was entered into and its proceeds were dispersed prior to the applicable statute of limitations, then a claim arising out of submitting any subsequent contractually required financial documentation is also untimely, irrespective of when that documentation is submitted. Defendants would have this Court apply a bizarre, invented, inverted form of the "relation back" doctrine, pursuant to which if one aspect of fraudulent

business conduct falls outside the statute of limitations, then all subsequent aspects of fraudulent conduct also fall outside the statute, no matter how inextricably intertwined.

Of course, this is contrary to controlling case law, which holds that a cause of action accrues at the time "when one misrepresents a material fact." Graubard Mollen Dannett & Horowitz v Moskovitz, 86 NY2d 112, 12 (1995). Moreover, even the plain language of Executive Law § 63(12) states: "[t]he term 'repeated' as used herein shall include repetition of any *separate and distinct fraudulent or illegal act*" (emphasis added). Clearly, the submission of each separate fraudulent SFC is a distinct fraudulent act.

OAG is not challenging the loans, the closings, or the disbursements; it is challenging defendants' submissions of financial documents containing false and misleading information. Thus, any SFC that was submitted after July 13, 2014, falls within the applicable statute of limitations. CW Capital Cobalt VR Ltd. v CW Capital Invs., LLC, 195 AD3d 12, 19-20 (1st Dept 2021) (each instance of wrongful conduct a "separate, actionable wrong" giving "rise to a new claim").

Materiality

It is settled that a standalone cause of action under Executive Law § 63(12) does not require a demonstration of materiality but merely that an "act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." People v Gen. Elec. Co., 302 AD2d 314, 314-315 (1st Dept 2003) (holding that, unlike GBL § 349, plaintiff need not prove "the challenged act or practice 'was misleading in a material way'").

Although the Domino's court found that "evidence regarding falsity, materiality, reliance and causation plainly is *relevant* to determining whether the Attorney General has established that the challenged conduct has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud" (Domino's at 11), every Appellate Division and the New York Court of Appeals now hold that materiality and scienter are not requirements for liability under § 63(12).

However, as discussed *infra*, although materiality is required under the second through seventh causes of action, it is not required under a standalone cause of action under Executive Law § 63(12), the OAG's first cause of action.

Defendants argue that the SFCs were not materially misleading, claiming, *inter alia* that: (1) "[t]here is no such thing as objective value"; (2) "a substantial difference between valuation in the SOFCs and appraisal, per se, is not evidence of inflated values"; (3) there is nothing improper about using "fixed assets" valuations as opposed to using the current market valuation approach; and (4) it was proper to include "internally developed intangibles, such as the brand premium used in the valuation of President Trump's golf clubs, in personal financial statements." NYSCEF Doc No. 1292 at 20-23.

Thus, defendants essentially argue that value is inherently subjective; that because internal brand valuations are in the eye of the beholder (here, Donald Trump), they cannot be overvalued. Defendants argue that "[n]o bank or underwriter would have reasonably been materially misled by the alleged misstatements or omissions in the SOFCs and other information the Defendants

made available to their counterparties because no sophisticated counterparty would have considered the SOFCs and other information provided by the Defendants alone as material to extend credit or set an interest rate, or issue an insurance policy or price a risk, without doing their own due diligence." NYSCEF Doc. No. 835 at 45.

Defendants also argue: "[i]t follows that if the user [of the SFCs] is in possession of the correct information, then the financial statements are not materially misstated." Id. at 39. Defendants' stance is, practically speaking, that they may submit false SFCs so long as the recipients know, from their own due diligence, that the information is false.

Accepting defendants' premise would require ignoring decades of controlling authority holding that financial statements and real property valuations are to be judged objectively, not subjectively. FMC Corp. v Unmack, 92 NY2d 179, 191 (1998) ("*objectively* reasonable conclusion, drawn by a competent and experience appraiser, was based on credible evidence" that demonstrated "property was overvalued") (emphasis added); Assured Guar. Mun. Corp. v DLJ Mortg. Cap. Inc., 44 Misc 3d 1206(A) (Sup Ct, NY County 2014) ("Credit Suisse is reading this as a subjective standard, dependent on Assured's expectations. Credit Suisse is wrong. It is well settled that this is an objective standard").

Moreover, courts have long found that "generally, it is the 'market value' which provides the most reliable valuation for assessment purposes." Great Atl. & Pac. Tea Co. v Kiernan, 42 NY2d 236, 239 (1977); Consol. Edison Co. of New York v City of New York, 33 AD3d 915, 916 (2d Dept 2007) ("the standard for assessment remains market value"), affd 8 NY3d 591. Beauty may be in the eye of the beholder, but value is in the eye of the marketplace.

Further, defendants' assertion that the discrepancies between their valuations and the OAG's are immaterial is nonsense. What OAG has established, in many cases by clear, indisputable documentary evidence (as discussed *infra*), is not a matter of rounding errors or reasonable experts disagreeing. OAG has submitted conclusive evidence that between 2014 and 2021, defendants overvalued the assets reported in the SFCs between 17.27-38.51%; this amounts to a discrepancy of between $812 million and $2.2 billion dollars. NYSCEF Doc. No. 766 at 70. Even in the world of high finance, this Court cannot endorse a proposition that finds a misstatement of at least $812 million dollars to be "immaterial." Defendants have failed to identify any authority for the notion that discrepancies of the magnitude demonstrated here could be considered immaterial.

The Second through Seventh Causes of Action

The Second, Third, Fourth, Fifth, Sixth, and Seventh causes of action allege violations of Executive Law § 63(12) based on underlying violations of the New York Penal Law prohibiting falsification of business records, issuance of false financial statements, and insurance fraud.

Liability under New York Penal Law § 175.05 (falsifying business records in the second degree) requires that a person "[m]akes or causes a false entry in the business records of an enterprise."

Liability under New York Penal Law § 175.45 (issuing a false financial statement) requires that a person "represents in writing that a written instrument purporting to describe a person's financial

condition or ability to pay as of a prior date is accurate with respect to such person's current financial condition or ability to pay, whereas [that person] knows it is materially inaccurate in that respect."

Liability under New York Penal Law § 176.05 (insurance fraud) requires that a person submitted an application for insurance either: (1) knowing that it "contain[ed] materially false information concerning any fact material thereto"; or (2) "conceal[ed], for the purpose of misleading, information concerning any fact material thereto."

Accordingly, unlike a standalone cause of action under Executive Law § 63(12). the second through seventh causes of action require demonstrating some component of intent and materiality. People v Alamo Rent A Car, Inc., 174 Misc 2d 501, 505 (Sup Ct, NY County 1997) ("As in all other situations requiring *mens rea*, however, petitioners may prove, by reference to facts and circumstances surrounding the case, that respondents knew that their conduct was unlawful. Moreover, petitioners need not prove respondents acted with an 'evil motive, bad purpose or corrupt design'") (internal citations omitted).

OAG has demonstrated that there remain, at the very least, disputed issues of fact as to whether defendants violated these statutes, intentionally and materially. Thus, there are issues of fact as to causes of action two through seven that require a trial.

The Court has considered defendants' remaining arguments and finds them to be unavailing and/or non-dispositive.

Accordingly, defendants' motion for summary judgment dismissing every cause of action is denied in its entirety.

OAG'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ITS FIRST CAUSE OF ACTION

Summary Judgment Burden on Standalone Executive Law § 63(12) Cause of Action

OAG moves for partial summary judgment, seeking to hold defendants liable under OAG's first cause of action, for fraud under Executive Law § 63(12).

As this Court has noted *ad nauseum*, Executive Law § 63(12) "authorizes the Attorney General to bring a special proceeding against any person or business that engages in repeated or persistent fraudulent or illegal conduct, while broadly construing the definition of fraud so as to include acts characterized as dishonest or misleading and eliminating the necessity for proof of an intent to defraud." People v Apple Health & Sports Club, Ltd., Inc., 206 AD2d 266-267 (1st Dept 1994).

As OAG's first cause of action, the only one upon which it moves for summary judgment, alleges a standalone violation of Executive Law § 63(12), OAG need only prove: (1) the SFCs were false and misleading; and (2) the defendants repeatedly or persistently used the SFCs to transact business.

This instant action is essentially a "documents case." As detailed *infra,* the documents here clearly contain fraudulent valuations that defendants used in business, satisfying OAG's burden to establish liability as a matter of law against defendants. Defendants' respond that: the documents do not say what they say; that there is no such thing as "objective" value; and that, essentially, the Court should not believe its own eyes.[9]

The defenses Donald Trump attempts to articulate in his sworn deposition are wholly without basis in law or fact. He claims that if the values of the property have gone up in the years since the SFCs were submitted, then the numbers were not inflated at that time (i.e.; "But you take the 2014 statement, if something is much more valuable now – or, I guess, we'll have to pick a date which was a little short of now. But if something is much more valuable now, then the number that I have down here is a low number"). NYSCEF Doc. No. 1363 at 69-75). He also seems to imply that the numbers cannot be inflated because he could find a "buyer from Saudi Arabia" to pay any price he suggests.[10] Id. at 30-33, 60-62, 79-80.

The Trump Tower Triplex

This Court takes judicial notice that the Trump Tower apartment in which Donald Trump resided for decades (the "Triplex") is 10,996 square feet. NYSCEF Doc. No. 816 at 2. Between 2012-2016, Donald Trump submitted SFCs falsely claiming that the Triplex was 30,000 square feet, resulting in an overvaluation of between $114-207 million dollars. NYSCEF Doc. Nos. 782 at Rows 833-834, 1028, 783 at Rows 799-800, 1199, 784 at Rows 843-844, 785 at Rows 882-883, 789 at Row 913, 817. The misrepresentation continued even after defendants received written notification from *Forbes* that Donald Trump had been overestimating the square footage of the Triplex by a factor of three.[11]

In opposition, defendants absurdly suggest that "the calculation of square footage is a subjective process that could lead to differing results or opinions based on the method employed to conduct the calculation.[12]" NYSCEF Doc. No. 1293 at 20. Well yes, perhaps, if the area is rounded or oddly shaped, it is possible measurements of square footage could come to slightly differing results due to user error. Good-faith measurements could vary by as much as 10-20%, not 200%.

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[9] As Chico Marx, playing Chicolini, says to Margaret Dumont, playing Mrs. Gloria Teasdale, in "Duck Soup," "well, who ya gonna believe, me or your own eyes?"

[10] This statement may suggest influence buying more than savvy investing.

[11] Three days after receiving a written inquiry from *Forbes*, Trump Organization Vice President, Amanda Miller, sent an email to Trump Organization Executive Vice President and Chief Legal Officer, Alan Garten, indicating that she "spoke to Allen W[eisselberg] re: [Trump World Tower and Trump Tower] – we are going to leave those alone." NYSCEF Doc. No. 821. Although OAG need not show intent to deceive under a standalone § 63(12) cause of action, this directive to continue to use a grossly inflated number despite clear knowledge it is false demonstrates the repetitive and ongoing nature of defendants' propensity to engage in fraud.

[12] Despite this assertion in their motion papers, counsel for defendants, Christopher Kise, Esq, conceded during oral argument held on September 22, 2023, that square footage is, in fact, an objective number.

A discrepancy of this order of magnitude, by a real estate developer sizing up his own living space of decades, can only be considered fraud.[13]

OAG unquestionably satisfies its two-prong burden of demonstrating the SFCs from 2012-2016 calculated the value of the Triplex based on a false and misleading square footage, and that some of the defendants repeatedly and persistently used the SFCs to transact business.

Seven Springs Estate

Defendant Seven Springs LLC owns over 200 acres of contiguous land in the towns of Bedford, New Castle and North Castle in Westchester County, New York.

In 2000, non-party the Royal Bank of Pennsylvania appraised the "as is" market value of Seven Springs to be $25 million if converted to residential development. NYSCEF Doc. No. 825. In 2006, the same bank performed a new appraisal, which showed Seven Springs had an "as is" market value of $30 million. NYSCEF Doc. No. 826.

In 2012, Seven Springs LLC received another appraisal that estimated a six-lot subdivision on the New Castle portion of the property to have a fair market value of approximately $700,000 per-lot. NYSCEF Doc. No. 829 at 203-206.

In July 2014, because the Trump Organization was considering donating a conservation easement, it retained Cushman & Wakefield to provide a "range of value" of the Seven Springs property. NYSCEF Doc. Nos. 830, 831. Cushman & Wakefield's appraiser, David McArdle, analyzed the sale of eight lots in Bedford, six lots in New Castle, and ten lots in North Castle and determined the fair market value for all 24 lots was approximately $30 million. NYSCEF Doc. No. 831, 832.

Notwithstanding receiving market values from professional appraisals in 2000, 2006, 2012, and 2014 valuing Seven Springs at or below $30 million, Donald Trump's 2011 SFC reported the value to be $261 million, and his 2012, 2013 and 2014 SFCs reported the value to be $291 million.[14] NYSCEF Doc. Nos. 769, 770, 771, 772.

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[13] In fact, OAG demonstrates that as of 2012, no apartment sold in New York City had ever approached the price at which defendants valued the Triplex, noting that the highest overall sale at that time was $88 million for a Central Park West penthouse. The SFCs valued the Triplex at a staggering $180,000,000-$327,000,000 for the years 2012-2016. NYSCEF Doc. No. 1 at ¶276.

[14] The statutes of limitations have run for all claims that accrued before July 13, 2014. However, although not actionable by themselves, evidence of fraud that predates July 13, 2014, may still be used as evidence in evaluating OAG's request for permanent injunctive relief, wherein the Court must determine whether there has been "a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d 490, 496-97 (2016) (detailing standard for permanent injunctive relief under Executive Law 63(12) and "reject[ing] defendants' arguments that the Attorney General must show irreparable harm in order to obtain a permanent injunction").

In early 2016, Cushman & Wakefield performed another appraisal of Seven Springs, which included the planned development, and determined that as of December 1, 2015, the entire parcel was worth $56.6 million. NYSCEF Doc. Nos. 824 at 9; 875; 876.

Even giving defendants the benefit of the $56.6 million figure as of December 1, 2015, the value submitted on Donald Trump's 2014 SFC was inflated by over 400%. Accordingly, OAG has demonstrated liability for the false 2014 SFC for fraudulently inflating the value of Seven Springs.

Trump Park Avenue

Trump Park Avenue is a residential building included as an asset on Donald Trump's SFCs for the years 2011-2021. NYSCEF Doc. Nos. 769-779. In 2011, 12 of the unsold residential condominium units were subject to New York City's rent regulation laws. NYSCEF Doc. No. 948 at 3. By 2014, nine units remained subject to rent restrictions. NYSCEF Doc. No. 966. By 2020, six units remained subject to rent restrictions. NYSCEF Doc. No. 971.

A 2010 appraisal performed by the Oxford Group valued the 12 rent-stabilized units at $750,000 total, or $62,500 per unit. NYSCEF Doc. No. 952. A 2020 appraisal performed by Newmark Knight Frank valued the six units that remained subject to stabilization at $22,800,090 total, or $3,800,315 per unit. NYSCEF Doc. No. 972.

Notwithstanding, for the years 2014-2021, the Trump Organization submitted SFCs that valued these rent-restricted units as if they were unencumbered, inflating the value of each unit between as much 700% (in 2014) and 64% (in 2021). NYSCEF Doc. Nos. 772-779.

In an unsuccessful attempt to rebut OAG's prima facie demonstration, defendants proffer that the units are not overvalued because "the rent-stabilized units have the potential at some point in the future to be converted into unencumbered (by rent stabilization) units."[15] NYSCEF Doc. No. 1292 at 57. They further concede that "[t]his is the assumption the owner made when assessing potential asset pricing or value." Id.

[15] As every New Yorker knows, rent regulated units may be passed on from one generation to the next in perpetuity.

However, the SFCs are required to state "current" values, not "someday, maybe" values. At the time defendants provided the subject SFCs to third parties they unquestionably falsely inflated the value of the units based on a false premise that they were unrestricted.[16]

40 Wall Street

The Trump Organization, through defendant 40 Wall Street LLC, owns a ground lease at 40 Wall Street and pays ground rent to the landowner.

In 2010, Cushman & Wakefield appraised the Trump Organization's interest in 40 Wall Street at $200 million. NYSCEF Doc. Nos. 878-79. Cushman & Wakefield appraised again in 2011 and 2012, reaching valuations of between $200 and $220 million. NYSCEF Doc. Nos. 881-82. The Trump Organization possessed and was familiar with these appraisals. NYSCEF Doc. Nos. 817 at 135-138; 883.

Despite these appraisals, the 2011 and 2012 SFCs valued the Trump Organization's interest in the property at $524.7 million and $527.2 million, respectively, an overvaluation of more than $300 million each year.[17] NYSCEF Doc. Nos. 769, 770.

In 2015, Cushman & Wakefield once again appraised the property, and valued it at $540 million.[18] NYSCEF Doc. No. 887. Notwithstanding this appraised value, the 2015 SFC listed the value of 40 Wall Street at $735.4 million.[19] NYSCEF Doc. No. 773.

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[16] Mazars accountant Donald Bender testified that when he asked Jeffrey McConney, "Do you have any other appraisals?", Jeffrey McConney stated "I have nothing else," demonstrating an intent to conceal or mislead the accountants. NYSCEF Doc. No. 1262 at 243.

Further, Patrick Birney, a Trump Organization employee working directly under Jeffrey McConney, conceded that the Trump Organization maintained a spreadsheet for day-to-day operations on the Trump Park Avenue offering plan that included both the offering plan prices *and* the current market values, but that the Trump Organization concealed its own actual market estimates from Mazars by omitting the market value column in its spreadsheet and providing Mazars with only the offering plan prices. NYSCEF Doc. No. 946.

[17] Although any liability arising out of the submission of the 2011 and 2012 SFCs is time barred; as previously discussed, these submissions may be considered as evidence in support of OAG's request for injunctive relief.

[18] OAG plausibly asserts that this $540 million is also inflated; however, for purposes of this motion, OAG does not dispute the number, and argues that, even if the Court were to accept defendants' number as accurate, the 2015 SFC was still materially false, as it stated the value as nearly $200 million more than the $540 million appraisal. NYSCEF Doc. No. 766 at n 7.

[19] An email exchange dated August 4, 2014, between Allen Weisselberg and his son, Jack Weisselberg, a Ladder Capital employee, discusses the 2015 $540 million Cushman & Wakefield appraisal. NYSCEF Doc. No. 888. Notwithstanding direct knowledge of it, the 2015 SFC valued 40 Wall Street at nearly $200 million more. NYSCEF Doc. No. 773.

Defendants assert that overvaluations of two hundred million dollars are immaterial, as the "NYAG has produced no evidence to suggest... that Ladder Capital would have been uncomfortable allowing President Trump to guarantee the 40 Wall Street Loan if his net worth was only $1.9 billion, as the NYAG contends." NYSCEF Doc. No. 835 at 48. They further emphasize that "Ladder Capital has received in excess of $40 million in interest and 40 Wall Street LLC has never defaulted under the Loan."[20] Id.

Defendants' argument misses the mark. As has been explained to defendants many times, in many legal proceedings, and in painstaking detail, "where, as here, there is a claim based on fraudulent activity [under Executive Law 63(12)], disgorgement may be available as an equitable remedy, *notwithstanding the absence of loss to individuals or independent claims for restitution.*" Ernst & Young at 569 (emphasis added). Accordingly, it is not significant that the banks made money (or did not lose money)[21], or that they would have done business with the Trump Organization notwithstanding. The law is clear that the only requirements for liability to attach under a standalone Executive Law § 63(12) cause of action are (1) a finding that the SFCs were false and misleading; and (2) that defendants repeatedly or persistently used the SFCs to conduct business.

Accordingly, OAG has demonstrated liability for the false valuation of 40 Wall Street in the 2015 SFC.

Mar-a-Lago

Donald Trump purchased Mar-a-Lago in 1985. In 1993, he sought, and obtained, permission from the Town of Palm Beach to turn the property into a social club (NYSCEF Doc. No. 900), and on August 10, 1993, he entered into a "Declaration of Use Agreement" by which he agreed "the use of Land shall be for a private social club" and that "[a]ny additional uses of the Land shall be subject to approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Landmarks Preservation Commission of the Town, the Architectural Review Commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or any agencies under the foregoing governmental authorities." NYSCEF Doc. No. 915.

In 1995, Donald Trump signed a "Deed of Conservation and Preservation Easement" in which he gave up his right to use Mar-a-Lago for any purpose other than as a social club (the "1995 Deed"). NYSCEF Doc. No. 901. In 2002, Donald Trump signed a "Deed of Development Rights." NYSCEF Doc. No. 902. As part of granting a conversation easement to the National

[20] The defendant borrowers did not default on any loans; but we only know that with hindsight. Markets are volatile, and borrowers come in all shapes and sizes. The next borrower, or the one after that, might default, and if its SFCs are false, the lender might unfairly be left holding the bag. This will distort the lending marketplace and deprive other potential borrowers of the opportunity to obtain loans and create wealth.

[21] The subject loans made the banks lots of money; but the fraudulent SFCs cost the banks lots of money. The less collateral for a loan, the riskier it is, and a first principal of loan accounting is that as risk rises, so do interest rates. Thus, accurate SFCs would have allowed the lenders to make even more money than they did.

Trust for Historic Preservation, Donald Trump agreed that "Trump intend[s] to forever extinguish [his] right to develop or use the Property for any purpose other than club use" (the "2002 Deed"). The 2002 Deed also specifically "limits changes to the Property including, without limitation, the division or subdivision of the Property for any purpose, including use as single family homes, the interior renovation of the mansion, which may be necessary and desirable for the sale of the Property as a single family residential estate, the construction of new buildings and the obstruction of open vistas." Id. In exchange for granting the easement, Mar-a-Lago was taxed at a significantly lower rate (the club rate) than it otherwise would have been (the private home rate). NYSCEF Doc. No. 903.

From 2011-2021, the Palm Beach County Assessor appraised the market value of Mar-a-Lago at between $18 million and $27.6 million. NYSCEF Doc. No. 905.

Notwithstanding, the SFCs' values do not reflect these land use restrictions. Donald Trump's SFCs for 2011-2021 value Mar-a-Lago at between $426,529,614 million and $612,110,496, an overvaluation of *at least 2,300%*, compared to the assessor's appraisal. NYSCEF Doc. Nos. 769-779.

In an attempt to rebut the OAG's demonstration, defendants rely on the opinion affidavit of Lawrence Moens, who they purport is "the most accomplished and knowledgeable ultra-high net worth real estate broker in Palm Beach, Florida."[22] Moens claims that "the SOFC were and are appropriate and indeed *conservative*." NYSCEF Doc. No. 1292 at 35-36 (emphasis added). The Moens' affidavit states in a conclusory fashion that because he believes "this unique property offers to an elite purchaser the unparalleled opportunity to own an exclusive and extensive family compound in the most desirable sections of Palm Beach... the valuations in the SOFC were reasonable and below my estimate for the market value of the property each year." NYSCEF Doc. No. 1435. Moreover, Moens opines that "[i]f Mar-A-Lago was available for sale, I am confident that in short order, I would be in a position to produce a ready, willing and able buyer who would have interest in securing the property for their personal use as a residence, or even, their own club." Id. at 29. Critically, Moens does not opine *at what price* he is "confident" he could find a buyer (although he opines separately, without relying on any objective evidence, that he believes that as of 2023 the property is worth $1.51 *billion*[23]).

It is well-settled that: "[w]here the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation, however, the opinion should be given no probative force and is insufficient to withstand summary judgment." Diaz v New York Downtown Hosp., 99 NY2d 542, 544 (2002); see also Gardner v Ethier, 173 AD2d 1002, 1003-4 (3d Dept 1991) ("the expert

[22] At oral argument, his domain of expertise was enlarged to nationwide status.

[23] In his sworn deposition, when asked "[w]ho were the dozen or so [qualified] buyers that you were referencing in your report, Lawrence Moens replied: "I could dream up anyone from Elon Musk to Bill Gates and everyone in between. Kings, emperors, heads of state. But with net worths in the multiple billions. I don't know how many people in the world have a net worth of more than $10 billion, but I think it's quite a number. There are a lot." NYSCEF Doc. No. 1428 at 184-185. Obviously, this Court cannot consider an "expert affidavit" that is based on unexplained and unsubstantiated "dream[s]."

affidavit is also inadmissible because it is conclusory and the views are apparently based to a great extent on hearsay statements from unspecified witnesses as well as upon speculations on the part of the expert"). Accordingly, defendants' reliance on the Moens affidavit is unpersuasive and certainly insufficient to rebut OAG's prima face case.

Defendants further imply that they may ignore the plain language of the 2002 Deed restrictions because they would likely be able to use the Florida judicial system to get out of their contractual requirements; they further assert that because they may successfully breach their contract in the future, they were not required to consider the restrictions of the 2002 Deed when valuing the property. NYSCEF Doc. 1292 at 48-51. This argument is wholly without merit. At the time in which the defendants submitted the SFCs, the restrictions were in effect, and any valuations represented to third-parties must have incorporated those restrictions; failure to do so is fraud. Assets values that disregard applicable legal restrictions are by definition materially false and misleading.

Accordingly, OAG has demonstrated liability for the false valuation of Mar-a-Lago as appears in the SFCs from 2014-2021.

Aberdeen

The Trump Organization owns a golf course located in Aberdeen, Scotland ("Aberdeen"). The value assigned to Aberdeen was comprised of two parts: a value for the golf course and a value for the development of the non-golf course property, the latter of which is the focus here. Developing any of the non-golf course property required that the local Scottish authorities approve any proposed plans.

From 2011-2014, Donald Trump's SFC reported that he had "received outline planning permission [from local Scottish authorities] in December 2008 for... a residential village consisting of 950 holiday homes and 500 single family residences and 36 golf villas." NYSCEF Doc. Nos. 769-776.

The Trump Organization had "outline planning permission" to build a total of 1,486 homes. Notwithstanding, the 2014-2018 SFCs valuations of Aberdeen assumed the Trump Organization had received approval to build 2,500 homes, despite never having received such approval. NYSCEF Doc. Nos. 772-776, 907.

Additionally, the approval of the 950 holiday homes and 36 golf villas came with severe restrictions on their use: they could be used solely as rental properties and could be rented for no more than 12 weeks in any calendar year. NYSCEF Doc. No. 908 at 13. The Trump Organization submitted financial documentation to the local Scottish authorities representing that these short-term rentals would not be profitable and therefore would not add any value to Aberdeen. NYSCEF Doc. Nos. 909 at 36, 910 at 7. Consequently, the only profitable development of Aberdeen would have been the 500 single family residences. In July 2017, non-party Ryden LLP, acting on behalf of the Trump Organization, prepared a development appraisal for Aberdeen wherein it assessed the profit from developing 557 homes and estimated profits in the range of £16,525,000-£18,546,000. NYSCEF Doc. No. 1231 at 10.

In May 2018, the Trump Organization applied to the Aberdeen City Council to reduce the scope of the development project to 550 dwellings, consisting of 500 private residences, 50 leisure/resorts units, and zero holiday homes (having determined they were not profitable). NYSCEF Doc. No. 911. In September 2019, the Aberdeen City Council approved the proposal for a reduction in the proposed development, but restricted the 50 leisure/resort units, as they had the holiday homes, to be "occupied on a holiday letting or fractional ownership basis only and for no other purposes whatsoever including use as a permanent residential unit... ." NYSCEF Doc. No. 907 at 7.

Notwithstanding, the 2019 SFC, finalized a month after the latest approval, derived a value based on the assumption that 2,035 private residential homes could be developed. Adjusting the values to reflect the permissible 500 private residences reduces the value of the Aberdeen undeveloped property as reflected in the 2019 SFC by £164,196.704. NYSCEF Doc. No. 777 at 16, 789 at Cells G561-619, 912.

Although defendants wholly fail to address Aberdeen in any of their three memos of law, in their response to OAG's statement of material facts, they state that "Defendants dispute the veracity of the appraisal because President Trump, as a land developer, took optimistic views of potential future value which is not contemplated in the appraisal, thereby undervaluing Trump Aberdeen." NYSCEF Doc. No. 1293 at 82-83. For all the reasons discussed *supra*, this defense fails.

Accordingly, OAG has demonstrated liability for the false valuation of Aberdeen as appears in the SFCs from 2014-2019.

US Golf Clubs

Donald Trump owns or leases a number of golf clubs across the United States and abroad that are included as assets on his SFCs. NYSCEF Doc. Nos. 769-779. The value for these golf clubs is provided in the aggregate in the SFCs, although supporting accounting spreadsheets evidence the breakdown of the values assigned to each club. NYSCEF Doc. Nos. 781-791.

The "Trump Brand Premium"

The evidence indicates that for the years 2013-2020, the SFCs relied on values that included a 15% or 30% "premium" based on the "Trump brand" for the following seven golf clubs: Trump National Golf Course ("TNGC") Jupiter, TNGC LA, TNGC Colts Neck, TNGC Philadelphia, TNGC DC, TNGC Charlotte, and TNGC Hudson Valley. NYSCEF Doc. Nos. 783-790. However, the SFCs for those years (and, indeed, all the years before this Court), also contained express language stating: "The goodwill attached to the Trump name has significant value that has *not* been reflected in the preparation of this financial statement." NYSCEF Doc. Nos. 769-779 (emphasis added). Accordingly, the SFCs "double dip," both purporting not to include a brand premium while simultaneously including one of 15% or 30%.

In opposition, defendants submit the affidavit of Eli Bartov, an accounting professor at New York University, who distinguishes between overall brand value and brand value ascribed to individual golf courses. His point, ensconced in numerous lines of academic jargon, seems to be that defendants said that they were eschewing the former and opting only for the latter. NYSCEF Doc. No. 1378 at 14-15. This is a red herring and factually incorrect. The SFCs

clearly state that they do not include a brand value for *any* of the properties included in the SFCs; indeed, the SFCs emphatically declare that "[t]he goodwill attached to the Trump name has significant financial value *that has not been reflected in the preparation of this financial statement.*" NYSCEF Doc. Nos. 769-779 (emphasis added). Perhaps Donald Trump could have ascribed a brand value to golf courses that he viewed as "special," but he was obligated to disclose those exceptions when he represented that the SFCs did not reflect his brand value.

TNGC Briarcliff and TNGC LA

The valuations of TNGC Briarcliff and TNGC LA were each comprised of a value for the golf course and a value for the undeveloped land. As the Trump Organization was considering donating a conservation easement over both properties, they had both properties appraised.

An April 2014 appraisal valued the golf club portion of TNGC Briarcliff at $16,500,000; later that same year, Donald Trump valued the golf club portion of TNGC Briarcliff at $73,430,217, *an inflation of more than 300%*, in his SFC. NYSCEF Doc. Nos. 923 at 147; 785 at Row 257. A 2015 appraisal valued the golf club portion of TNGC LA at $16,000,000 as of December 26, 2014; the 2015 SFC valued the golf club portion of TNGC LA at $56,615,895, *an inflation of more than 200%.* NYSCEF Doc. Nos. 924 at 151; 785 at Row 386.

In an attempt to rebut this strong showing of fraud, defendants argue that they were not obligated to use market value, but, instead, were permitted to use the "fixed assets" approach to valuation, pursuant to which defendants may "value" a property by aggregating the money spent to acquire and maintain a property. NYSCEF Doc. No. 1292. They further rely on the Bartov affidavit, which states, in wholly conclusory fashion that: "[t]he assertion that 'Using fixed assets approach does not present the golf clubs at their estimated current value because the approach ignores market conditions and the behavior of informed buyers and sellers' is unsubstantiated and false." NYSCEF Doc. No. 1378 at 29.

Bartov is incorrect. Each of the corresponding SFCs include representations that "[a]ssets are stated at their estimated current values..." NYSCEF Doc. Nos. 769-779.[24] Accordingly, it is false and misleading to use a fixed-assets evaluation, which is completely different. The price for which you purchase property is not necessarily the price for which you can sell it. The latter, not the former, matters to lenders who want adequate collateral.

The Membership Liabilities

As part of the purchase of several of the golf club properties, Donald Trump agreed to assume the obligation to pay back refundable non-interest-bearing long-term membership deposits. However, notwithstanding that these liabilities must be satisfied in the future, the SFCs from 2012-2021 value them at $0. NYSCEF Doc. Nos. 769-779. This is false; they are a liability in the millions of dollars.

[24] In their response to OAG's statement of material facts, defendants concede that "GAAP defines Estimated Current Value as 'the amount at which the item could be exchanged between a buyer and seller, each of whom is well informed and willing, and neither of whom is compelled to buy or sell." NYSCEF Doc No. 1293 at 17.

However, the SFCs all state: "The fact that Mr. Trump will have the use of these funds for that period without cost and that the source of repayment will most likely be a replacement membership has led him to value this liability at zero." See e.g., NYCSCEF Doc. No. 772.

Although it was false to report the membership liabilities as $0, it was not, under the circumstances, *misleading*, as the SFCs state that the reason for so doing. Accordingly, OAG cannot prevail on liability as a result of the failure to report the membership liabilities.

Yet, as discussed *supra*, OAG has demonstrated liability for submitting fraudulent SFCs in 2014-2020 that falsely value the aforementioned US Golf Clubs based on undisclosed brand premiums and failure to report "current" values.

Vornado Partnership Properties

Donald Trump has a 30% limited partnership interest with non-party Vornado Realty Trust in entities that own office buildings in New York City (at 1290 Avenue of the Americas, hereinafter "1290 AOA") and San Francisco at 555 California Street.

Cash/Liquid Classification

Donald Trump's 30% limited partnership stake does not permit him to use or withdraw funds held by the partnerships. NYSCEF Doc. Nos. 916, 917. Notwithstanding, Donald Trump and his trustees classified his 30% interest in the Vornado partnership as a liquid/cash asset on his SFCs for the years 2013-2021. NYSCEF Doc. No. 771-779. This was even though it is "undisputed" by defendants that Donald Trump does not have "the right to use or withdraw [these] funds." NYSCEF Doc. No. 1293 at ¶387-388.

Defendants assert that "[e]ven if the cash held in the partnership was misclassified and should have been reported elsewhere on the SOFCs as an asset (e.g., in the value of the partnership interest), it would not have inflated the total value of cash or President Trump's net worth reported on the SOFCs." NYSCEF Doc No. 1292 at 39.

This argument does not hold any water. Put simply, it was false and misleading for defendants to indicate that it had access to between $14,221,800 and $93,126,589 in liquid assets, sometimes nearly a third of the total cash it claimed, when in fact those assets were completely illiquid. NYSCEF Doc. No. 1293 ¶ 403.

The Appraisals

Cushman & Wakefield appraised the value of 1290 AOA at $2 billion as of November 1, 2012, and $2.3 billion as of November 1, 2016. NYSCEF Doc. No. 919 at 5-6.

However, Donald Trump's 2014 SFC calculated his 30% share based on a purported value of $3,078,338,462; his 2015 SFC was based on a purported value of $2,985,819,936; and his 2016 SFC was based on a purported value of $3,055,000,000. NYSCEF Doc. Nos. 784 at Rows 709-715, 785 at Rows 748-755, 785 at Rows 779-784. This resulted in overvaluations of Donald Trump's 30% interest in 1290 AOA of between $205-$233 million dollars for those years.

CBRE appraised 1290 AOA and determined its value at $2 billion as of October 7, 2021. NYSCEF Doc. No. 947. Nonetheless, the 2021 SFC was calculated based upon a purported value of $2,574,813,800, an overvaluation of Donald Trump's 30% share by $172 million dollars. NYSCEF Doc. No. 791 at Row 918.

The instant motions do not task this Court with determining which appraisals are the most accurate, which would present issues of fact.[25] Rather, time and time again, the Court is not comparing one appraisal to another; it is comparing an independent professional appraisal to a pie-in-the-sky dream of concocted potential.

Accordingly, OAG has demonstrated liability for submitting fraudulent SFCs overvaluing Donald Trump's interest in the Vornado partnership in 2014-2016 and 2021.

Licensing Deals

Each of Donald Trump's SFCs from 2011-2021 has an asset category entitled "Real Estate Licensing Deals," which the SFC represents is value derived from "associations with others for the purpose of developing and managing properties" and the "cash flow that is expected to be derived... from these associations as their potential is realized." NYSCEF Doc. Nos. 769-779. The SFCs further state that "[i]n preparing [these] assessment[s], Mr. Trump and his management considered only situations which have evolved to the point where signed arrangements with the other parties exist and fees and other compensation which he will earn are reasonably quantifiable." Id.

Despite this express language, the SFCs from 2014-2018 and 2020-2021 include valuations of intra-organization deals, all between entities under the Trump Organization umbrella, in this category of assets. NYSCEF Doc. Nos. 1014, 1018, 1019, 1021, 1023, 1024, 1062, 1063, 1064. It was flatly false and misleading to include values of deals between Trump Organization entities while expressly representing in the SFCs that such assets included only valuations derived from "association with others." Improperly including these intra-organization deals resulted in an overvaluation of up to $224 million in 2014, $110 million in 2015, $120 million in 2016, $113 million in 2017, $115 million in 2018, $97 million in 2020, and $106 million in 2021. Id.

OAG has demonstrated liability for the false and misleading valuation of intra-company licensing deals on the SFCs from 2014-2018 and 2020-2021.

The Other Loans

OAG has established that defendants submitted false SFCs after July 13, 2014, pursuant to their other loan commitments. Defendants submitted SFCs to Deutsche Bank as part of their contractual obligations arising out of three different loans: (1) a Chicago Loan, undertaken by 401 North Wabash Venture LLC; (2) a Doral Loan, undertaken by Trump Endeavor LLC; and (3) an Old Post Office Loan, undertaken by Trump Old Post Office LLC. Defendants certified the accuracy of these SFCs to Deutsche Bank for the years 2014-2019 and 2021[26] as part of their

[25] Nor is this Court asked to determine Donald Trump's total wealth.

[26] The gap for 2020 may have been due to the COVID-19 pandemic.

contractual obligations. NYSCEF Doc. Nos. 1097, 1098, 1099, 1100, 1102, 1104, 1106, 1124, 1126, 1155, 1156, 1157.

The Individual Defendants

OAG has demonstrated liability on behalf of all the named individual defendants: (1) **Donald Trump**, as each and every SFC was issued on behalf of "Donald J. Trump"; (2) **Donald Trump, Jr.**, who, along with Allen Weisselberg, certified the accuracy of the SFCs for 2016-2020, and who singlehandedly certified the accuracy of the 2021 SFC (NYSCEF Docs. No. 808-813); (3) **Eric Trump**, who is the listed source for the Seven Springs valuation in 2014,[27] and who signed several guarantor compliance certificates in 2020 and 2021 for Donald J. Trump (NYSCEF Doc. No. 802); (4) **Allen Weisselberg**, who certified the accuracy of the SFCs from 2014-2021 (NYSCEF Doc. Nos. 806-812); (5) and **Jeffrey McConney**, who led the process of preparing all the SFCs since the 1990s[28] (NYSCEF Doc. No. 822 at 52-68).

The Entity Defendants

It is settled law that "[a] parent corporation will not be held liable for the torts or obligations of a subsidiary *unless it can be shown that the parent exercised complete dominion and control over the subsidiary*." Potash v Port Auth. of New York & New Jersey, 279 AD2d 562, 562 (2d Dept 2001) (emphasis added). Here, it is undisputed that Donald Trump, through one corporate form or another, exercised complete control over the umbrella of entities operating in furtherance of, or on behalf of, "the Trump Organization."

Defendants do not dispute that DJT Holdings LLC and DJT Holdings Managing Member LLC are entities that sit at the top of the Trump Organization's organizational chart and together own many of the Trump-affiliated entities that comprise the Trump Organization. DJT Holdings Managing Member LLC owns 100% of the Trump Organization and DJT Holdings LLC owns 100% of the Trump Organization LLC. NYSCEF Doc. Nos. 4, 819 at ¶1.

Accordingly, OAG has established liability on behalf of all the named entity defendants: (1) **The Trump Organization Inc.**, **the Trump Organization LLC**, **DJT Holdings LLC**, and **DJT Holdings Managing Member LLC**, as each participated in the preparation, submission and certification of the SFCs after July 13, 2014 through the acts of the individual defendants as described *supra*; (2) the **DJT Revocable Trust**, as both Donald Trump Jr. and Allen Weisselberg certified the accuracy of the 2016-2019 SFCs in their capacities as "Trustee, the Donald J. Trump Revocable Trust dated April 7, 2014, as amended" (NYSCEF Doc. No. 808); (3) **Trump Endeavor LLC**, which was the borrower on the Doral Loan, for which SFCs were submitted after July 13, 2014; (4) **401 North Wabash Venture LLC**, which was the borrower on a loan for "Trump Chicago," under which SFCs were required to be (and were) submitted

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[27] Eric Trump also reaffirmed the SFCs accuracy on July 9, 2019. NYSCEF Doc. Nos. 782 at Row 679, 783 at Rows 638-40, 784 at Row 660, 1183.

[28] Jeffrey McConney acknowledged his personal role in preparing supporting data for Donald Trump's SFCs beginning in 2011, testifying that: "I assemble the documentation" and that he would send both supporting data spreadsheets and backup documentation to the accountants. He further conceded that the supporting data spreadsheets were referred to as "Jeff's supporting data" or "Jeff's supporting schedule." NYSCEF Doc. No. 822 at 40, 67-68, 212, 294.

after July 13, 2014; (5) **Trump Old Post Office LLC**, as it was the borrower on the "Old Post Office" loan, under which SFCs were required to be (and were) submitted after July 13, 2014; and **Seven Springs LLC**, the borrowing entity (as described *supra*) under which SFCs were required to be (and were) submitted after July 13, 2014.

Injunctive Relief

OAG has prevailed on liability on its first cause of action pursuant to Executive Law § 63(12) as against all defendants: Donald J. Trump; Donald Trump, Jr.; Eric Trump; Allen Weisselberg; Jeffrey McConney; the DJT Revocable Trust; the Trump Organization Inc; the Trump Organization LLC; DJT Holdings LLC; DJT Holdings Managing Member LLC; Trump Endeavor 12 LLC; 401 North Wabash Venture LLC; Trump Old Post Office LLC; 40 Wall Street LLC; and Seven Springs LLC.

If liability is established under Executive Law § 63(12), the statute itself provides that the attorney general may obtain "an order enjoining the continuance of such business activity or of any fraudulent or illegal acts... and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of ... section one hundred thirty of the general business law...."

"[T]he Attorney General may obtain permanent injunctive relief under... Executive Law § 63(12) upon a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d at 496-97 (further stating "[t]his is not a 'run of the mill' action for an injunction, but rather one authorized by remedial legislation, brought by the Attorney-General on behalf of the People of the State and for the purposes of preventing fraud and defeating exploitation") (internal citations omitted).

Having found, at the commencement of the action, that OAG had preliminarily demonstrated defendants' "propensity to engage in persistent fraud," this Court appointed the Hon. Barbara S. Jones (ret.) as an independent monitor "to ensure there is no further fraud or illegality that violates § 63(12) pending the final disposition of this action." NYSCEF Doc. No. 194. On August 3, 2023, Judge Jones reported as follows:

> [S]ince my appointment I have reviewed material financial and accounting information submitted by the Trump Organization. As part of my review, I have made preliminary observations regarding certain current financial disclosures with respect to the Trump Organization's reporting of financial information. Specifically, I have observed that information regarding certain material liabilities provided to lenders – such as intercompany loans between or among Trust entities and Donald J. Trump, certain of the Trust's contingent liabilities, as well as refundable golf club membership deposits—has been incomplete. The Trust also has not consistently provided all required annual and quarterly certifications attesting to the accuracy of certain financial statements.

> In addition, annual audited financial statements for certain entities, prepared by an external accounting firm, list depreciation expenses. However, interim internally prepared financial statements provided to third parties for these same entities inconsistently report depreciation expenses.

NYSCEF Doc. No. 647. Even with a preliminary injunction in place, and with an independent monitor overseeing their compliance, defendants have continued to disseminate false and misleading information while conducting business. This ongoing flouting of this Court's prior order, combined with the persistent nature of the false SFCs year after year, have demonstrated the necessity of canceling the certificates filed under GBL § 130, as the statute provides. People v Northern Leasing, 70 Misc 3d 256, 279-80 (Sup Ct, NY County 2020) (denying a trial on the petition and ordering the LLC respondents to dissolve upon a finding of persistent fraud under Executive Law § 63(12)).

Having prevailed on liability on a standalone Executive Law § 63(12) cause of action, the Attorney General is entitled to the first two prayers for relief sought in her complaint: (1) canceling any certificate filed under and by virtue of the provisions of New York General Business Law § 130 for all the entity defendants found liable, as well as any other entity controlled or beneficially owned by the individual defendants found liable herein, which and who participated in or benefitted from the foregoing fraudulent schemes; and (2) appointing an independent monitor to oversee compliance, financial reporting, valuations, and disclosures to lenders, insurers, and tax authorities at the Trump Organization. NYSCEF Doc. No. 1 at 213.

Remaining Issues to be Determined at Trial

Anything presented in the parties' moving papers that this Court has not ruled upon in this Decision and Order, including determinations on liability for the second through seventh causes of action, the amount of disgorgement of profits to which OAG is entitled, and determinations on the third through ninth prayers for relief sought by OAG in its complaint, presents disputed issues of fact that shall proceed to trial.

Conclusion

For the reasons stated herein, it is hereby

ORDERED that defendants' motion for summary judgment is denied; and it is further

ORDERED that plaintiff's motion for sanctions is granted in part, to the extent of sanctioning Michael Madaio, Esq. (Habba Madaio & Associates, LLP), Clifford S. Robert, Esq. (Robert & Robert PLLC), Michael Farina Esq. (Robert & Robert PLLC), Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC), and Armen Morian (Morian Law PLLC) in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Decision and Order; and it is further

ORDERED that plaintiff's motion for partial summary judgment on its first cause of action is granted in part, to the extent of finding defendants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, the DJT Revocable Trust, the Trump Organization Inc, the Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC to be liable as a matter of law for persistent violations of Executive Law § 63(12); and it is further

ORDERED that any certificates filed under and by virtue of GBL § 130 by any of the entity defendants or by any other entity controlled or beneficially owned by Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney are canceled; and it is further

ORDERED that within 10 days of the date of this order, the parties are directed to recommend the names of no more than three potential independent receivers to manage the dissolution of the canceled LLCs; and it is further

ORDERED that the Hon. Barbara S. Jones (ret.) shall continue to serve as an independent monitor of the Trump Organization until further Court order; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

9/26/2023
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[X]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

vs.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC,

Defendants.

Index No. 452564/2022

AFFIRMATION OF SERVICE

Motion Seq. No. 028

CHRIS D. KRIMITSOS, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms the following statements to be true under the penalty of perjury:

1. I am an associate of the law firm of Robert & Robert PLLC, and am not a party to the above-captioned action.

2. On October 23, 2023, I served the within Notice of Appeal and Informational Statement, both dated October 23, 2023, together with a copy of the Decision and Order of the Supreme Court of the State of New York, New York County (Honorable Arthur F. Engoron, J.S.C.), dated September 26, 2023, with Notice of Entry, upon the following parties, at the addresses listed after each party's name, by depositing a true copy of same enclosed in a postpaid

properly addressed wrapper in official deposit under the exclusive care and custody of the United States Postal Service within the State of New York:

Kevin C. Wallace, Esq.
Colleen K. Faherty, Esq.
Office of the New York State Attorney General
28 Liberty Street
New York, New York 10005
Counsel for Plaintiff

Alina Habba, Esq.
Michael Madaio, Esq.
Habba Madaio & Associates, LLP
112 West 34th Street, 17th & 18th Floors
New York, New York 10120
Counsel for Defendants Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

Christopher M. Kise, Esq.
(*Admitted Pro Hac Vice*)
Continental PLLC
101 North Monroe Street, Suite 750
Tallahassee, Florida 32301
Counsel for Defendants The Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

Dated: Uniondale, New York
October 23, 2023

Chris D. Krimitsos
CHRIS D. KRIMITSOS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

v.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

Defendants.

Morian Law PLLC,

Attorney for Defendants.

Index No: 452564/2022

Engoron, J.S.C.

NOTICE OF APPEAL

Motion Seq. No. 028

PLEASE TAKE NOTICE THAT, pursuant to CPLR §§ 5511 and 5515, Morian Law PLLC hereby appeals to the Appellate Division, First Department, from the Decision and Order on Motion by Hon. Arthur F. Engoron, J.S.C., dated September 26, 2023 (NYSCEF Doc. No. 1533), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on September 27, 2023, and served by Notice of Entry on September 27, 2023, which granted Plaintiff's motion for sanctions.

This appeal is taken from each and every part of the Order insofar as Morian Law PLLC is aggrieved. A copy of the Informational Statement pursuant to 22 NYCRR 1250.3(a) is attached hereto as Exhibit A.

Dated: New York, New York
October 24, 2023

Respectfully submitted,

ARMEN MORIAN
MORIAN LAW PLLC
60 East 42nd Street, Suite 4600
New York, New York 10165
(212) 787-3300
armenmorian@morianlaw.com
Attorneys Pro Se

EXHIBIT “A”

Supreme Court of the State of New York
Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

- against -

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC.,THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type

- ☒ Civil Action
- ☐ CPLR article 75 Arbitration
- ☐ Action Commenced under CPLR 214-g
- ☐ CPLR article 78 Proceeding
- ☐ Special Proceeding Other
- ☐ Habeas Corpus Proceeding

Filing Type

- ☒ Appeal
- ☐ Original Proceedings
  - ☐ CPLR Article 78
  - ☐ Eminent Domain
  - ☐ Labor Law 220 or 220-b
  - ☐ Public Officers Law § 36
  - ☐ Real Property Tax Law § 1278
- ☐ Transferred Proceeding
  - ☐ CPLR Article 78
  - ☐ Executive Law § 298
- ☐ CPLR 5704 Review

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

☐ Administrative Review	☒ Business Relationships	☒ Commercial	☐ Contracts
☐ Declaratory Judgment	☐ Domestic Relations	☐ Election Law	☐ Estate Matters
☐ Family Court	☐ Mortgage Foreclosure	☐ Miscellaneous	☐ Prisoner Discipline & Parole
☐ Real Property (other than foreclosure)	☒ Statutory	☐ Taxation	☐ Torts

Appeal

Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

☐ Amended Decree	☐ Determination	■ Order	☐ Resettled Order
☐ Amended Judgement	☐ Finding	☐ Order & Judgment	☐ Ruling
☐ Amended Order	☐ Interlocutory Decree	☐ Partial Decree	☐ Other (specify):
■ Decision	☐ Interlocutory Judgment	☐ Resettled Decree	
☐ Decree	☐ Judgment	☐ Resettled Judgment	

Court: Supreme Court	County: New York
Dated: 09/26/2023	Entered: 09/27/2023
Judge (name in full): Hon. Arthur F. Engoron	Index No.: 452564/2022
Stage: ■ Interlocutory ☐ Final ☐ Post-Final	Trial: ☐ Yes ■ No If Yes: ☐ Jury ☐ Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? ■ Yes ☐ No

If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

2023-04925

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: ☐ Order to Show Cause ☐ Notice of Petition ☐ Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court	County: Choose County
Judge (name in full):	Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Morian Law PLLC, appeals from the Decision and Order of Supreme Court, New York County (Hon. Arthur F. Engoron, J.S.C.), dated September 26, 2023 and entered by the Clerk of the Court on September 27, 2023, which granted Plaintiff's motions for sanctions.

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Whether Supreme Court committed errors of law and/or fact, abused its discretion, and/or acted in excess of its jurisdiction by, inter alia, granting Plaintiff's motion for sanctions against Morian Law PLLC in the amount of $7,500.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	PEOPLE OF THE STATE OF NEW YORK	Plaintiff	Respondent
2	DONALD J. TRUMP	Defendant	None
3	DONALD TRUMP, JR.	Defendant	None
4	ERIC TRUMP	Defendant	None
5	ALLEN WEISSELBERG	Defendant	None
6	JEFFREY MCCONNEY	Defendant	None
7	THE DONALD J. TRUMP REVOCABLE TRUST	Defendant	None
8	THE TRUMP ORGANIZATION, INC.	Defendant	None
9	THE TRUMP ORGANIZATION LLC	Defendant	None
10	DJT HOLDINGS LLC	Defendant	None
11	DJT HOLDINGS MANAGING MEMBER	Defendant	None
12	TRUMP ENDEAVOR 12 LLC	Defendant	None
13	401 NORTH WABASH VENTURE LLC	Defendant	None
14	TRUMP OLD POST OFFICE LLC	Defendant	None
15	40 WALL STREET LLC	Defendant	None
16	SEVEN SPRINGS LLC	Defendant	None
17	Morian Law PLLC	Petitioner	Appellant
18			
19			
20			

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Kevin C. Wallace, Esq. and Colleen K. Faherty, Esq., Office of the New York State Attorney General			
Address: 28 Liberty Street			
City: New York	State: New York	Zip: 10005	Telephone No: 212-416-6046
E-mail Address: kevin.wallace@ag.ny.gov; colleen.faherty@ag.ny.gov			
Attorney Type: ☐ Retained ☐ Assigned ■ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 1			
Attorney/Firm Name: Alina Habba, Esq. and Michael Madaio, Esq., Habba Madaio & Associates, LLP			
Address: 112 West 34th Street, 17th &18th Floors			
City: New York	State: New York	Zip: 10020	Telephone No: 908-869-1188
E-mail Address: ahabba@habbalw.com; mmadaio@habbalaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 2, 5-16			
Attorney/Firm Name: Christopher M. Kise, Esq., Continental PLLC			
Address: 101 North Monroe Street, Suite 750			
City: Tallahassee	State: Florida	Zip: 32301	Telephone No: 305-677-2707
E-mail Address: ckise@continentalpllc.com			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ■ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 7, 10-16			
Attorney/Firm Name: Clifford S. Robert, Esq. and Michael Farina, Esq., Robert & Robert PLLC			
Address: 526 RXR Plaza			
City: Uniondale	State: New York	Zip: 11556	Telephone No: 516-832-7000
E-mail Address: crobert@robertlaw.com; mfarina@robertlaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 3-4			
Attorney/Firm Name: Armen Morian, Esq., Morian Law PLLC			
Address: One Grand Central Place, 60 East 42nd Street, Suite 4600			
City: New York	State: New York	Zip: 10165	Telephone No: 212-787-3300
E-mail Address: armenmorian@morianlaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 2, 7-17			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff, -against- DONALD J. TRUMP, *et al.*, Defendants.	Index No. 452564/2022 **NOTICE OF ENTRY**

PLEASE TAKE NOTICE that annexed hereto is a true and correct copy of the Decision and Order of the Honorable Arthur F. Engoron, J.S.C. dated September 26, 2023, on Motion Sequence Numbers 027, 028, and 029 (NYSCEF Nos. 1531, 1532, 1533), filed and entered in the Office of the Clerk of the Supreme Court, New York County on the 27th day of September, 2023.

Dated: New York, New York
September 27, 2023

LETITIA JAMES
Attorney General of the State of New York

By: */s/ Colleen K Faherty*
Colleen K. Faherty
Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
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colleen.faherty@ag.ny.gov

Attorney for the People of the State of New York

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON **PART** 37

Justice

----------X

INDEX NO. 452564/2022

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

MOTION DATES 08/30/2023, 08/30/2023, 09/05/2023

Plaintiff,

MOTION SEQ. NO. 026, 027, 028

- v -

DONALD J. TRUMP, DONALD TRUMP JR, ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

DECISION + ORDER ON MOTIONS

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 026) 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1292, 1293, 1294, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415,

1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1442, 1443, 1444, 1445, 1446, 1447

were read on this motion for PARTIAL SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 027) 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1474

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 028) 1263, 1264, 1265, 1276, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473

were read on this motion for SANCTIONS.

Upon the foregoing documents, it is hereby ordered that defendants' motion for summary judgment is denied, plaintiff's motion for partial summary judgment is granted in part, and plaintiff's motion for sanctions is granted in part, all as detailed herein.

This action arises out of a years-long investigation that plaintiff, the Office of the Attorney General of the State of New York ("OAG"), conducted into certain business practices that defendants engaged in from 2011 through 2021. OAG alleges that the individual and entity defendants committed repeated and persistent fraud by preparing, certifying, and submitting to lenders and insurers false and misleading financial statements, thus violating New York Executive Law § 63(12).

Procedural Background

In 2020, OAG commenced a special proceeding seeking to enforce a series of subpoenas against various named defendants and other persons and entities. This Court presided over that proceeding and issued several orders compelling compliance with OAG's subpoenas. See People v The Trump Org., Sup Ct, NY County, Index No. 541685/2020. During that proceeding, OAG and the Trump Organization entered into an agreement, which, broadly speaking, tolled the statute of limitations from November 5, 2020, through May 31, 2022. NYSCEF Doc. No. 1260.

On November 3, 2022, this Court found preliminarily that defendants had a propensity to engage in persistent fraud by submitting false and misleading Statements of Financial Condition ("SFCs") on behalf of defendant Donald J. Trump ("Donald Trump"). NYSCEF Doc. No. 183. Accordingly, the Court granted a preliminary injunction against any further fraud and appointed the Hon. Barbara S. Jones (ret.) as an independent monitor to oversee defendants' financial statements and significant asset transfers. NYSCEF Doc. Nos. 193 and 194.

Defendants moved to dismiss the complaint. In a Decision and Order dated January 6, 2023, this Court denied the motion. NYSCEF Doc. Nos. 453. Defendants appealed, resulting in a January 6, 2023 Order wherein the Appellate Division, First Department modified this Court's order to the extent of: (1) declaring that the "continuing wrong doctrine does not delay or extend [the statute of limitations]"; (2) finding that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and timely against defendants not subject to the tolling agreement if they accrued after February 6, 2016; and (3) dismissing the complaint as against defendant Ivanka Trump on statute of limitations grounds, finding that she was not an employee of the Trump Organization at the time at which the parties entered into the tolling agreement. People v Trump, 217 AD3d 609 (1st Dept 2023).

The Appellate Division declined to dismiss *any* other defendants or *any* causes of action.

Discovery ended on July 28, 2023, and OAG filed a note of issue shortly thereafter. NYSCEF Doc. No. 644. OAG now moves for partial summary judgment on its first cause of action, for fraud under Executive Law § 63(12). NYSCEF Doc. No. 765. Separately, plaintiff now moves, pursuant to 22 NYCRR 130-1.1, to sanction defendants for frivolous motion practice. NYSCEF Doc. No. 1263. Defendants also move for summary judgment, seeking to dismiss the complaint in its entirety. NYSCEF Doc. No. 834.

Executive Law § 63(12)

Executive Law § 63(12) provides, as here pertinent, as follows:

> Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of section four hundred forty of the former penal law or section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper. The word "fraud" or "fraudulent" as used herein shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions. The term "persistent fraud" or "illegality" as used herein shall include continuance or carrying on of any fraudulent or illegal act or conduct. The term "repeated" as used herein shall include repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON ALL CAUSES OF ACTION

Arguments Defendants Raise Again

Standing and Capacity to Sue

Defendants' arguments that OAG has neither capacity nor standing to sue under Executive Law § 63(12), and that the disclaimers of non-party accountants Mazars insulate defendants, invoke the time-loop in the film "Groundhog Day." This Court emphatically rejected these arguments in its preliminary injunction decision and in its dismissal decision, and the First Department affirmed both. Defendants' contention that a different procedural posture mandates a reconsideration, or *a fortiori*, a reversal, is pure sophistry[1].

As this Court and others have made abundantly clear, "[i]t is not disputed that the Attorney General is empowered to sue for violations of [Executive Law § 63(12)]." People v Greenberg, 21 NY3d 439, 446 (2013) (finding Executive Law § 63(12) to be broadly worded anti-fraud device); People v Ford Motor Co., 74 NY2d 495, 502 (1989) ("Executive Law § 63(12) is the procedural route by which the Attorney-General may apply to Supreme Court for an order enjoining repeated illegal or fraudulent acts").

Parens Patriae and Consumer Ambit

Defendants repeat the erroneous argument that the complaint must be dismissed because OAG cannot demonstrate the requirements of a *parens patriae* action, which is one in the public interest. "*Parens patriae* is a common-law standing doctrine that permits the state to commence an action to protect a public interest, like the safety, health or welfare of its citizens." People v Grasso, 11 NY3d 64, 72 at n 4 (2008). Invocation of such doctrine, or its requirements, is not necessary where, as here, the New York legislature has specifically empowered the Attorney General to bring such an action pursuant to Executive Law § 63(12). People v Credit Suisse Sec. (USA) LLC, 31 NY3d 622, 633 (2018) ("it is undisputed that Executive Law § 63(12) gives the Attorney General standing to redress liabilities recognized elsewhere in the law, expanding the scope of available remedies"); People v Trump Entrepreneur Initiative LLC, 137 AD3d 409, 417 (1st Dept 2016) ("[E]ven apart from prevailing authority, the language of the statute itself appears to authorize a cause of action; like similar statutes that authorize causes of action, § 63(12) defines the fraudulent conduct that it prohibits, authorizes the Attorney General to commence an action or proceeding to foreclose that conduct, and specifies the relief, including equitable relief, that the Attorney General may seek").

In any event, even if compliance with the requirements of the *parens patriae* doctrine is necessary, which it is not, OAG has easily satisfied those requirements, as it is well-settled that "[i]n varying contexts, courts have held that a state has a quasi-sovereign interest in protecting the integrity of the marketplace." Grasso at 69 n 4; People v Coventry First LLC, 52 AD3d 345, 346 (1st Dept 2008) ("the claim pursuant to Executive Law § 63(12) constituted proper exercises

[1] Indeed, the Court made this crystal clear in its January 6, 2023 order when it found: "Here, the issues of capacity and standing, are pure issues of law and do not depend on a trial of disputed issues of fact. Simply put, who the instant parties are and what the law says, which determine capacity and standing, are not disputed issues of fact that need to be tried." NYSCEF Doc. No. 453 at 4.

of the State's regulation of businesses within its borders in the interest of securing an honest marketplace"); People v Amazon.com, Inc., 550 F Supp 3d 122, 130-131 (SD NY 2021) ("[T]he State's statutory interest under § 63(12) encompasses the prevention of either 'fraudulent or illegal' business activities. Misconduct that is illegal for reasons other than fraud still implicates the government's interests in guaranteeing a marketplace that adheres to standards of fairness...").

Defendants' rehashed argument that OAG's complaint must be dismissed because it is not designed to protect consumers is unavailing. New York v Feldman, 210 F Supp 2d 294, 299-300 (SD NY 2002) ("[D]efendants' claim that section 63(12) is limited to consumer protection actions is simply incorrect. The New York Attorney General has repeatedly used section 63(12) to secure relief for persons who are not consumers in cases that are not consumer protection actions").

Defendants cite to the trial court decision People v Domino's Pizza, Inc., NY Slip Op 30015(U) (Sup Ct, NY County 2021), which is not binding on this Court, as authority for the proposition that any relief sought here should come in the form of private contract litigation, not "a law enforcement action under a statute designed to address public harm." NYSCEF Doc. No. 835 at 39. However, Domino's is wholly distinguishable from the instant case. There, the Court found that "OAG did not establish that Domino's representations to franchisees... were false, deceptive, or misleading. Accordingly, the Court concludes that OAG has not established that Domino's engaged in conduct that 'tends to deceive or creates an atmosphere conducive to fraud.'" Domino's at 26[2]. Here, as discussed *infra*, OAG demonstrates that defendants repeatedly submitted fraudulent financial documents to obtain financial benefits which otherwise they would not have received.

Defendants glaringly misrepresent the requirements of an Executive Law § 63(12) cause of action. Citing to People v Northern Leasing Sys., Inc., 70 Misc 3d 256, 267 (Sup Ct, NY County 2021), defendants assert that OAG must show "the practice is one likely to mislead a reasonable consumer acting reasonably under the circumstances." NYSCEF Doc. No. 835 at 42. However, the word "consumer" does not appear anywhere in the referenced decision, and defendants' characterization of its holding is inaccurate[3]. Northern Leasing confirms that the "test for fraud under Executive Law § 63(12) is whether an act tends to deceive or creates an environment conducive to fraud." Northern Leasing at 267 (further holding "Executive Law § 63(12) expands fraud to encompass new liability, while including non-statutory fraud claims" and finding that "[a] claim under Executive Law § 63(12) is the exercise of 'the State's regulation of businesses within its borders in the interest of securing an honest marketplace'").

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[2] As the failure to demonstrate false misrepresentations foreclosed the possibility of liability on that issue in Domino's, any commentary about the statute's requirements was pure *dicta*.

[3] Although "consumer" does appear in the First Department's affirmance of Northern Leasing, it does not advance defendants' proposition that Executive Law § 63(12) actions be consumer oriented; it simply reaffirms that "the test for fraud is whether the targeted act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." 193 AD3d 67 (1st Dept 2021). The fact that Northern Leasing challenged actions targeted at consumers does not mean that Executive Law § 63(12) is restricted to such actions.

Non-Party Disclaimers

Defendants, yet again, argue that OAG's complaint must be dismissed because the SFCs contain language, provided by non-party accountants Mazars, that indicate that they have not audited or reviewed the accompanying financial statements and therefore cannot express an opinion as to whether the financial statements comply with Generally Accepted Accounting Principles ("GAAP"). However, as this Court already ruled, these non-party disclaimers do not insulate defendants from liability, as they plainly state that "Donald J. Trump is responsible for the preparation and fair presentation of the financial statement in accordance with accounting principles generally accepted in the United States of America and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the financial statement." NYSCEF Doc. No. 183.

As this Court explained in its November 3, 2022 Decision and Order: "[t]he law is abundantly clear that" using a disclaimer as a defense to a justifiable reliance claim requires proof that: "(1) the disclaimer is made sufficiently specific to the particular type of fact misrepresented or undisclosed; and (2) the alleged misrepresentations or omissions did not concern facts peculiarly within the [defendant's] knowledge." Basis Yield Alpha Fund (Master) v Goldman Sachs Grp., Inc., 115 AD3d 128, 137 (1st Dept 2014) ("a [plaintiff] may not be precluded from claiming reliance on misrepresentation of facts peculiarly within the [defendant's] knowledge"); People v Bull Inv. Grp., Inc., 46 AD2d 25, 29 (3d Dept 1974) ("It has been stated that '[t]he rule is clear that where one party to a transaction has superior knowledge, or means of knowledge not open to both parties alike, he is under a legal obligation to speak and his silence constitutes fraud"). As the SFCs did not particularize the type of fact misrepresented or undisclosed and were unquestionably based on information peculiarly within defendants' knowledge, defendants may not rely on such purported disclaimers as a defense.

In sum, the Mazars disclaimers put the onus for accuracy squarely on defendants' shoulders.

Scienter and "Participation" Requirements

Defendants erroneously claim that Fletcher v Dakota, Inc, 99 AD3d 43, 49 (1st Dept 2012), stands for the proposition that the purported "participation element [of a cause of action under Executive Law § 63(12)] is satisfied where the defendant 'directed, controlled, or ratified the decision that led to plaintiff's injury.'" However, Fletcher is not an Executive Law § 63(12) action, it was brought as a corporate tort; accordingly, is not relevant here.[4] Executive Law § 63(12) is much more than a mere codification of common law fraud.

Defendants also incorrectly rely on Abrahami v UPC Const. Co., 224 AD2d 231, 233 (1st Dept 1996), for the proposition that "[m]erely providing copies of purportedly false financial statements is insufficient." NYSCEF Doc. No. 835 at 55. However, as Abrahami was not brought pursuant to Executive Law § 63(12), its analysis regarding "intent to deceive" is irrelevant. Unlike the situation in Abrahami, where an action is brought pursuant to Executive

[4] In fact, had defendants not cut off the beginning of the sentence they cited, it would be evident on its face that such case is legally irrelevant, as the full sentence reads: "A leading treatise on corporations states that a director may be held individually liable to third parties for a corporate tort if he either participated in the tort or else 'directed, controlled, approved or ratified the decision that led to the plaintiff's injury.'" Fletcher at 49.

Law § 63(12), "good faith or lack of fraudulent intent is not in issue." People v Interstate Tractor Trailer Training, Inc., 66 Misc 2d 678, 682 (Sup Ct, NY County 1971) (holding liability under Executive Law § 63(12) does not require demonstrating an "intent to defraud"); Trump Entrepreneur Initiative at 417 ("fraud under section 63(12) may be established without proof of scienter or reliance"); Bull Inv. Grp. at 27 ("[i]t is well-settled that the definition of fraud under subdivision 12 of section 63 of the Executive Law is extremely broad and proof of scienter is not necessary").

Disgorgement of Profits

In flagrant disregard of prior orders of this Court *and* the First Department, defendants repeat the untenable notion that "disgorgement is unavailable as a matter of law" in Executive Law § 63(12) actions. NYSCEF Doc. No. 835 at 70. This is patently false, as defendants are, or certainly should be, aware that the Appellate Division, First Department made it clear *in this very case* that "[w]e have already held that the failure to allege losses does not require dismissal of a claim for disgorgement under Executive Law § 63(12)." Trump, 217 AD3d at 610.

Defendants nonetheless rely on the trial court decision in People v Direct Revenue, LLC, 19 Misc 3d 1124(A) (Sup Ct, NY County 2008), for the proposition that Executive Law § 63(12) "do[es] no[t] authorize the general disgorgement of profits received from sources other than the public." NYSCEF Doc. No. 835 at 71-72. However, defendants' neglect to mention that Direct Revenue was superseded, and essentially overruled, in 2016 by the New York Court of Appeals in People v Greenberg, which unequivocally held that "disgorgement is an available remedy under the Martin Act and the Executive Law." People v Greenberg, 27 NY3d 490, 497 (2016).

Also fatally flawed is defendants' reliance on People v Frink Am., Inc., 2 AD3d 1379, 1380 (4th Dept 2003), as it relies on the outdated proposition that Executive Law § 63(12) "does not create any new causes of action" and thus, the remedy of disgorgement is unavailable. NYSCEF Doc. No. 835 at 73-74. However, in Trump Entrepreneur Initiative, in which at least three of the instant defendants were parties, the First Department unambiguously declared that "the Attorney General is, in fact, authorized to bring a cause of action for fraud under Executive Law § 63(12)." Trump Entrepreneur Initiative at 418; see also People v Pharmacia Corp., 27 Misc 3d 368, 373 (Sup Ct, NY County 2010) (holding "Executive Law § 63(12) applies to fraudulent conduct actionable at common law, as well as to conduct for which liability arises solely from the statute").

Defendants incorrectly posit that, under People v Ernst & Young, LLP, 114 AD3d 569 (1st Dept 2014), disgorgement is available under the Martin Act but not under Executive Law § 63(12). NYSCEF Doc. No. 836 at 73. This is simply untrue. In Ernst & Young, the First Department specifically held that disgorgement was an available and potentially "crucial" remedy in an Executive Law § 63(12) action. Ernst & Young at 570.

Defendants correctly assert that "the record is devoid of any evidence of default, breach, late payment, or any complaint of harm" and argue that as none of the recipients of the subject SFCs ever lodged a complaint with OAG or otherwise claimed damages, disgorgement of profits would be inappropriate. NYSCEF Doc. No. 835 at 40.

However, that is completely irrelevant. As the Ernst & Young Court noted:

> [W]here, as here, there is a claim based on fraudulent activity, disgorgement may be available as an equitable remedy, notwithstanding the absence of loss to individuals or independent claims for restitution. Disgorgement is distinct from the remedy of restitution because it focuses on the gain to the wrongdoer as opposed to the loss to the victim. Thus, disgorgement aims to deter wrongdoing by preventing the wrongdoer from retaining ill-gotten gains from fraudulent conduct. Accordingly, the remedy of disgorgement does not require a showing or allegation of direct losses to consumers or the public; the source of the ill-gotten gains is "immaterial."

Id. (disgorgement is not impermissible penalty "since the wrongdoer who is deprived of an illicit gain is ideally left in the position he would have been had there been no misconduct") (internal citations omitted); see also Amazon.com at 130 ("Executive Law § 63(12) authorizes the Attorney General to seek injunctive and other relief", and finding "the Attorney General can seek disgorgement of profits on the State's behalf").

Sanctionable Conduct for Frivolous Motion Practice

In response to both OAG's request for a preliminary injunction and to defendants' motions to dismiss, this Court rejected every one of the aforementioned arguments. In rejecting such arguments for the second time, this Court cautioned that "sophisticated counsel should have known better." [5] NYSCEF Doc. No. 453 at 5. However, the Court declined to impose sanctions, believing it had "made its point." Id.

Apparently, the point was not received.

One would not know from reading defendants' papers that this Court has already *twice* ruled against these arguments, called them frivolous, and *twice* been affirmed by the First Department.

"In its discretion, a court may award costs and financial sanctions against an attorney or party resulting from frivolous conduct." Kamen v Diaz-Kamen, 40 AD3d 937, 937 (2d Dept 2007). See Yan v Klein, 35 AD3d 729, 729–30 (2d Dept 2006) ("The plaintiff, following two prior actions, has 'continued to press the same patently meritless claims,' most of which are now barred by the doctrines of res judicata and collateral estoppel").

Defendants' conduct in reiterating these frivolous arguments is egregious. We are way beyond the point of "sophisticated counsel should have known better"; we are at the point of intentional and blatant disregard of controlling authority and law of the case. This Court emphatically rejected these arguments, as did the First Department. Defendants' repetition of them here is indefensible.

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5 The Court even went so far as to caution that the "arguments were borderline frivolous even the first time defendants made them." NYSCEF Doc. No. 453 at 3.

Pursuant to New York Administrative Code § 130-1.1, "[t]he Court, as appropriate, may make such an award of costs or impose such financial sanctions against either an attorney or a party to the litigation or against both." The provision further states that:

> For purposes of this Part, conduct is frivolous if:
>
> (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
>
> (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
>
> (3) it asserts material factual statements that are false.

22 NYCRR 130-1.1(c). Defendants' inscrutable persistence in re-presenting these arguments clearly satisfies the first of these three possible criteria.

When considering imposing sanctions "[a]mong the factors [the court] is directed to consider is whether the conduct was continued when it became apparent, or should have become apparent, that the conduct was frivolous, or when such was brought to the attention of the parties or to counsel." Levy v Carol Mgmt. Corp., 260 AD2d 27, 34 (1st Dept 1999) (further finding that sanctions both "punish past conduct" and "they are goal oriented, in that they are useful in deterring future frivolous conduct").

In its January 6, 2023 Decision and Order, this Court warned defendants that their "reiteration of [these previously rejected arguments] scattered across five different motions to dismis[s] was frivolous." NYSCEF Doc. No. 453 at 3.

In a last-ditch attempt to stave off sanctions, defendants have submitted an affirmation by the Hon. Leonard B. Austin (ret.), who had a supremely distinguished judicial career, culminating in 12 years on the Appellate Division, Second Department. NYSCEF Doc. No. 1449. Justice Austin presents what is essentially a primer on the interplay between motions to dismiss and motions for summary judgment, and every point of law is valid.

However, it is wholly invalid as a reason for this Court to deny sanctions. First, legal arguments are for counsel to make, not for experts to submit. "The rule prohibiting experts from providing their legal opinions or conclusions is 'so well-established that it is often deemed a basic premise or assumption of evidence law—a kind of axiomatic principle.'" In re Initial Pub. Offering Sec. Litig., 174 F Supp 2d 61, 64 (SD NY 2001) (citing Thomas Baker, The Impropriety of Expert Witness Testimony on the Law, 40 U Kan LRev 325, 352 (1992) (precluding "expert affidavits" on the law); accord, Note, Expert Legal Testimony, 97 Harv LRev 797, 797 (1984) ("it remains black-letter law that expert legal testimony is not permissible"). Neither defendants nor Justice Austin has sought permission to file an amicus brief. In their own submissions, defendants have expounded on the law of capacity, standing, disclaimers, motions to dismiss, motions for summary judgment, and sanctions. The heft and prestige of a legal lion adds nothing.

More importantly, the subject affirmation utterly fails to fit the specific facts of this case into the general principles it enunciates. In many situations, discovery, and a complete record, and the reversal of the burden of proof, will turn the tide, requiring that a valid complaint be dismissed because there is no evidence to support it. But standing and capacity are legal questions, not factual issues. Crucially, while defendants have, by their own account, conducted extensive discovery and have created a complete record, they fail to point to a single fact that discovery has uncovered, let alone a single fact in the record, that changes the calculus of their denied and doomed capacity and standing arguments.

Capacity and standing are not esoteric concepts. Infants, legally declared incompetents, and persons under certain legal disabilities are not allowed to sue. The New York Attorney General is none of the above. If my sibling or neighbor is harmed, I do not have standing to sue for his or her injury. Citizens may not sue to prevent governmental actions unless they may suffer some personal harm. Executive Law § 63(12) was promulgated to give the Attorney General standing to sue on behalf of the people of New York to prevent or deter the precise type of fraud here at issue. Arguments to the contrary are risible.

Defendants' arguments that the factual record developed in discovery changed the landscape under which standing should be viewed is legally preposterous. The best that defendants could muster at oral argument was to contend (incorrectly) that plaintiff cannot sue because the subject transactions were between private entities, and nobody lost money. However, that is purely an argument on the merits, not an argument on standing. Taken to its logical extreme, absolutely any time a defendant denies liability, it could move to dismiss on the ground of lack of standing.

Exacerbating defendants' obstreperous conduct is their continued reliance on bogus arguments, in papers and oral argument. In defendants' world: rent regulated apartments are worth the same as unregulated apartments; restricted land is worth the same as unrestricted land; restrictions can evaporate into thin air; a disclaimer by one party casting responsibility on another party exonerates the other party's lies; the Attorney General of the State of New York does not have capacity to sue or standing to sue (never mind all those cases where the Attorney General has sued successfully) under a statute expressly designed to provide that right; all illegal acts are untimely if they stem from one untimely act; and square footage subjective.

That is a fantasy world, not the real world.

There is also a larger context to the sanctions issue. Several defendants are no strangers to sanctions and why courts are sometimes constrained to issue them. In the investigatory special proceeding this Court found Donald Trump in contempt of Court and sanctioned him $10,000 per day for failing to comply with his discovery obligations. This Court lifted the contempt after 11 days. The First Department affirmed the contempt and the fines. People v Trump, 213 AD3d 503, 504 (1st Dept 2023) ("[T]he financial sanction to compel compliance was a proper exercise of the court's discretionary power and was not excessive or otherwise improper, under the particular circumstances").

In Donald J. Trump v Hillary R. Clinton, 22-14102-CV-DMM, ("Order on Motion for Indicative Ruling") (filed September 15, 2023) (SD FL), Judge Donald M. Middlebrooks denied what in

New York legal parlance would be called "a motion to reargue," pursuant to which Donald Trump asked Judge Middlebrooks to vacate sanctions imposed on him and his legal team totaling close to one million dollars. Judge Middlebrooks wrote, on the first page thereof, that "Movants acted in bad faith in bringing this lawsuit and that this case exemplifies Mr. Trump's history of abusing the judicial process.[6]" Id.

Unfortunately, sanctions are the only way to impress upon defendants' attorneys the consequences of engaging in repetitive, frivolous motion practice after this Court, affirmed by the Appellate Division, expressly warned them against doing so. Boye v Rubin & Bailin, LLP, 152 AD3d 1, 11 (1st Dept 2017) ("sanctions serve to deter future frivolous conduct" and their "goals include preventing the waste of judicial resources, and deterring vexatious litigation and dilatory or malicious litigation tactics").

It is of no consequence whether the arguments were made at the direction of the clients or *sua sponte* by the attorneys; counsel are "ethically obligated to withdraw any baseless and false claims, if not upon [their] own review of the record, certainly by the time [the] Supreme Court advised [them] of this fact." Boye at 11 (upholding sanctions against attorneys because "counsel continued to... pursue claims which were completely without merit in law or fact."); see also Nachbaur v Am. Transit Ins. Co., 300 AD2d 74, 75 (1st Dept 2002) (motion court properly sanctioned attorneys for "repetitive and meritless motions"); Leventritt v Eckstein, 206 AD2d 313, 314 (1st Dept 1994) (affirming sanctions imposed on attorney for "repeated pattern of frivolous conduct"); William Stockler & Co. v Heller, 189 AD2d 601, 603 (1st Dept 1993) (affirming sanctions against attorney upon finding "there was no factual or legal basis for defendant's original cross motion, or for the reargument motion, that both motions were 'totally frivolous' and were submitted 'just really to delay'"). Counsel should be the first line of defense against frivolous litigation.

Accordingly, this Court grants OAG's motion for sanctions, in part, to the extent of sanctioning each of defendants' attorneys who signed their names to the instant legal briefs[7], in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Order.

Arguments Defendants Raise for the First Time

Summary Judgment Standard

To prevail on its motion for summary judgment on all causes of action, defendants must first "make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient

[6] One factor Judge Middlebrooks considered was Donald Trump's "disregard for legal principles and precedent." Id. at 14. In short, Donald Trump, and his lawyers, are not sanctions neophytes. This is not their first rodeo.

[7] The following attorneys signed their names to defendants' instant briefs and are, accordingly, sanctioned $7,500 each: Michael Madaio, Esq. (Habba Madaio & Associates, LLP); Clifford S. Robert, Esq. (Robert & Robert PLLC); Michael Farina Esq. (Robert & Robert PLLC); Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC); and Armen Morian (Morian Law PLLC).

evidence to eliminate any material issues of fact from the case." Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 (1985). "Failure [of the movant] to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers." Id. If the defendants make out their prima facie showing, the burden then shifts to plaintiff to offer evidence sufficient to rebut that showing by identifying disputed issues of fact that should go before a trier of fact.

Defendants strenuously argue throughout their briefs that OAG has not met her burden sufficient to defeat defendants' motion for summary judgment. However, defendants misstate the black letter law applicable to summary judgment, citing to City Dental Servs., P.C. v New York Cent. Mut., 34 Misc 3d 127(A) (App Term 2d, 11th, 13th Jud Dists 2011) for the flatly wrong proposition that "in order to defeat summary judgment on these claims of predicate illegality, the NYAG must, with respect to each predicate illegality attached, 'establish[] each element of its cause with respect to those causes of action.'" NYSCEF Doc. No. 835 at 62.

Not only does City Dental not stand for that proposition (it merely found that under the circumstances of that case, plaintiff's evidence failed to meet her burden on summary judgment), but the law is well-settled that "to defeat a motion for summary judgment the opposing party must 'show facts sufficient to require a trial of any issue of fact," not make out its own case. Zuckerman v City of New York, 49 NY2d 557, 562 (1980). While OAG must establish each and every element of its cause(s) of action in order to *prevail* on its own motion for summary judgment, in order to defeat defendants' motion for summary judgment (provided defendants are able to demonstrate a prima facie case) "an opposing party must 'show facts sufficient to require a trial of any issue of fact.'" Guzman v Strab Const. Corp., 228 AD2d 645, 646 (2d Dept 1996) ("evidentiary facts derived from the documents submitted [in opposition to summary judgment motion] are sufficient to present a triable issue of fact").

The "Worthless Clause"

Defendants rely on what they call a "worthless clause" set forth in the SFCs under the section entitled "Basis of Presentation" that reads, as here pertinent, as follows:

> Assets are stated at their estimated current values and liabilities at their estimated current amounts using various valuation methods. Such valuation methods include, but are not limited to, the use of appraisals, capitalization of anticipated earnings, recent sales and offers, and estimates of current values as determined by Mr. Trump in conjunction with his associates and, in some instances, outside professionals. Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates presented herein are not necessarily indicative of the amount that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts.

NYSCEF Doc. Nos. 769 at 7; 770 at 7; 771 at 7; 772 at 7; 773 at 7.

In his sworn deposition, Donald Trump spent a lot of time invoking this clause: "Well, they call it a 'disclaimer.' They call it 'worthless clause' too, because it makes the statement 'worthless.'" NYSCEF Doc. No. 859 at 67. Donald Trump goes on to say that "I have a clause in there that says, don't believe the statement, go out and do your own work. This statement is 'worthless.' It means nothing." Id. at 68. Furthermore, Donald Trump implies that he did not consider it important to review the SFCs for accuracy because of the existence of this purported "worthless clause":

> OAG: Does this refresh your recollection of the process whereby you would get final review of the Statement of Financial Condition?
>
> DJT: Yeah, I think generally. It's interesting. I would say as years went by, I got less and less and then once I became President, I would – if I saw it at all, I'd see it, you know, after it was already done.
>
> OAG: So in the period –
>
> DJT: Again, you know, I hate to be boring and tell you this. When you have the worthless clause on a piece of paper and the first – literally the first page you're reading about how this is a worthless statement from the standpoint of your using it as a bank or whatever –whoever may be using it, you tend not to get overly excited about it. I think it had very little impact, if any impact on the banks.
>
> ....
>
> OAG: So am I understanding that you didn't particularly care about what was in the Statement of Financial Condition?
>
> DJT: I didn't get involved in it very much. I felt it was a meaningless document, other than it was almost a list of my properties, with good faith effort of people trying to put some value down. It was a good faith effort.

Id. at 107-108. Defendants further submit the affidavit and deposition transcript of Robert Unell, who purports to be an expert in commercial real estate, for the proposition that because of "the worthless clause" in the SFC, "no lender relies on these for what it is." NYSCEF Doc. Nos. 1030 at 183-184; 1031.

However, defendants' reliance on these "worthless" disclaimers is worthless. The clause does not use the words "worthless" or "useless" or "ignore" or "disregard" or any similar words. It does not say, "the values herein are what I think the properties will be worth in ten or more years." Indeed, the quoted language uses the word "current" no less than five times, and the word "future" zero times.

Additionally, as discussed *supra*, a defendant may not rely on a disclaimer for misrepresentation of facts peculiarly within the defendant's knowledge. Basis Yield Alpha Fund at 136. Here, as the valuations of the subject properties are, obviously, peculiarly within defendants' knowledge, their reliance on them is to no avail.

Furthermore, "[t]his 'special facts doctrine' applies *regardless of the level of sophistication of the parties*." TIAA Glob. Invs. LLC v One Astoria Square LLC, 127 AD3d 75, 87 (1st Dept 2015) (emphasis added) (holding disclaimer does not bar liability for fraud where facts were peculiarly within disclaiming party's knowledge).

Thus, the "worthless clause" does not say what defendants say it says, does not rise to the level of an enforceable disclaimer, and cannot be used to insulate fraud as to facts peculiarly within defendants' knowledge, even vis-à-vis sophisticated recipients.

The Tolling Agreement

The First Department has declared that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and claims against defendants not subject to the tolling agreement are timely if they accrued after February 6, 2016. Trump, 217 AD3d at 611. Defendants concede that the tolling agreement binds each of the LLC-defendants and the Trump Organization. However, they argue that each of the individual defendants and the Donald J. Trump Revocable Trust (the "DJT Revocable Trust") are not bound by the agreement.

Alan Garten, the Trump Organization's Chief Legal Officer, originally entered into the tolling agreement on behalf of "the Trump Organization" on August 27, 2021; the agreement was extended one time by an amendment dated May 3, 2022. NYSCEF Doc. No. 1260. It tolls the statute of limitations for the period from November 5, 2020, through May 31, 2022. Id. at 2. The agreement contains a footnote to the entity "the Trump Organization" that reads as follows:

> As noted in the December 7, 2019 subpoena issued in this investigation to the Trump Organization, the "Trump Organization" as used herein includes The Trump Organization, Inc; DJT Holdings LLC; DJT Holdings Managing Member LLC; and any predecessors, successors, present or former parents, subsidiaries, and affiliates, whether direct or indirect; and all directors, officers, partners, employees, agents, contractors, consultants, representatives, and attorneys of the foregoing, and any other Persons associated with or acting on behalf of the foregoing, or acting on behalf of any predecessors, successors, or affiliates of the foregoing.

Id. at 4 n 1.

Thus, the tolling agreement at issue here binds "all directors [and] officers" and "present or former parents" of the Trump Organization and its affiliates and subsidiaries. Id. It is undisputed that at the time the tolling agreement was executed, each individual defendant, Donald J. Trump, Donald Trump Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney,

were all directors and/or officers of the Trump Organization. NYSCEF Doc. No. 1293 at ¶¶ 673, 680, 696, 710, 736.

Defendants argue that the non-signatory defendants are not bound by the agreement, citing Highland Crusader Offshore Partners, L.P. v Targeted Delivery Techs. Holdings, Ltd., 184 AD3d 116, 121 (1st Dept 2020), for the "general principal that only the parties to a contract are bound by its terms." NYSCEF Doc. No. 835 at 27. However, defendants fail to quote the following sentence, which provides that "[a] non-signatory may be bound by a contract under certain limited circumstances." Highland at 122. See also Oberon Sec., LLC v Titanic Ent. Holdings LLC, 198 AD3d 602, 603 (1st Dept 2021) (non-signatory companies bound by agreement with language defining signatory to include "all subsidiaries, affiliates, [and] successors").

In People v JUUL Labs, Inc., 212 AD3d 414, 417 (1st Dept 2023), in a case involving nearly identical language in a corporate tolling agreement[8], the First Department recently held that non-signatory corporate affiliates, officers, and directors were bound by the agreement. Similarly, here all the individual defendants are bound by the instant tolling agreement's terms and may be held liable for any claims that accrued after July 13, 2014.

Defendants argue that OAG is judicially estopped from asserting that the agreement binds the individual defendants based on statements OAG's counsel made during oral argument in the investigatory special proceeding. NYSCEF Doc. No. 1292 at 26. Specifically, on April 25, 2022, while seeking to hold Donald Trump in contempt for failing to comply with court orders, OAG's counsel stated: "[t]here is hard prejudice because Donald Trump is not a party to the tolling agreement, that tolling agreement only applies to the Trump Organization." NYSCEF Doc. No. 1041 at 59.

For judicial estoppel to be applicable: "First, the party against whom the estoppel is asserted must have argued an inconsistent position in a prior proceeding; and second, the prior inconsistent position must have been adopted by the court in some manner." Bates v Long Island R. Co., 997 F2d 1028, 1038 (2d Cir 1993).

Defendants are correct that the first prong is satisfied, in that the statements OAG's counsel made during oral argument are inconsistent with the position OAG is now taking. However, defendants cannot demonstrate that this Court adopted the prior position. Indeed, this Court did not need to, and did not, consider the tolling agreement when it issued its April 26, 2022 Decision and Order finding Donald Trump in contempt. See Ghatani v AGH Realty, LLC, 181 AD3d 909, 911 (2d Dept 2020) ("For the doctrine [of judicial estoppel] to apply, there must be a final determination endorsing the party's inconsistent position in the prior proceeding").

This Court has not addressed the tolling agreement until now. Accordingly, defendants cannot demonstrate that this Court adopted OAG's prior inconsistent position.

[8] The substantially similar tolling agreement at issue in Juul can be found under Index No. 452168/2019, NYSCEF Doc. No. 176.

Moreover, "[t]he party asserting estoppel must show with respect to himself: '(1) lack of knowledge of the true facts; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change in his position.'" BWA Corp. v Alltrans Exp. U.S.A., Inc., 112 AD2d 850, 853 (1st Dept 1985). Here, none of the defendants claim that they changed their positions or courses of conduct in reliance upon the statement of OAG's counsel during oral argument.

Finally, while judicial estoppel may be applied to prohibit inconsistent changes in factual positions, courts have declined to extend the doctrine to changes in legal positions. Seneca Nation of Indians v New York, 26 F Supp 2d 555, 565 (WD NY 1998), affd, 178 F3d 95 (2d Cir 1999) (finding "[t]here is no legal authority" for "broadening of the doctrine" to "include seemingly inconsistent legal positions"). Who physically signed the agreement is a question of fact; whom it binds is a question of law.

Defendants' argument that the DJT Revocable Trust is not bound by the tolling agreement falls flat. In his deposition, Donald Trump affirmed under oath that the assets of the Trump Organization are held in the DJT Revocable Trust, for which he is the sole donor and beneficiary. NYSCEF Doc. No. 859 at 21. Donald Trump also affirmed that at the time the trust was formed, he was the sole trustee and remained the sole trustee until 2017, when defendants Allen Weisselberg and Donald Trump, Jr. became the sole trustees. Id. at 20-24.

As every beneficiary, donor, and trustee of the DJT Revocable Trust is a defendant bound by the tolling agreement, and as the trust is unquestionably a "parent" of the Trump Organization, so too does the tolling agreement bind the DJT Revocable Trust. See People v Leasing Expenses Co. LLC, 199 AD3d 521, 522 (1st Dept 2021) ("It may likewise be inferred that the trustees had knowledge of the activities of the businesses they controlled through the trust mechanism. Hence, under Executive Law § 63(12), the family trusts and trustees may likewise be held liable for the fraud"); see e.g., Kurzman v Graham, 12 Misc 3d 586, 590 (Sup Ct, NY County 2006) ("courts will not allow the owner of assets to evade creditors by placing the property in a trust while retaining a right to revoke the trust").

Defendants cite to New York Estates, Powers and Trust Law § 11-1.1(b)(17) for the proposition that only a trustee may bind a trust to an agreement. However, § 11-1.1(b)(17) does not state this; rather, it states:

> (b) In the absence of contrary or limiting provisions in the court order or decree appointing a fiduciary, or in a subsequent order or decree, or in the will, deed or other instrument, every fiduciary is authorized:
>
> ...
>
> (17) To execute and deliver agreements, assignments, bills of sale, contracts, deeds, notes, receipts and any other instrument necessary or appropriate for the administration of the estate or trust.

This provision simply says what a fiduciary is permitted to do in the absence of a contrary provision. It does nothing to advance defendants' argument that *only* a trustee may bind a trust,

particularly since defendants fail to cite to any provision of the DJT Revocable Trust restricting who can bind it, as § 11-1.1(b)(17) anticipates.

Moreover, Korn v Korn, 206 AD3d 529, 530 (1st Dept 2022), upon which defendants inexplicably rely, is irrelevant to the instant analysis, as that case involved an examination by the court as to whether a fiduciary had a right or duty to negotiate on behalf of an estate pursuant to § 11-1.1(b)(13), not pursuant to § 11-1.1(b)(17), to which defendants cite.

Finally, "the Attorney General should not be limited, in [her] duty to protect the public interest, by an... agreement [s]he did not join." People v Coventry First LLC, 13 NY3d 108, 114 (2009) (holding Attorney General not bound by arbitration agreement when pursuing Executive Law § 63(12) claim and finding "[s]uch an arrangement between private parties cannot alter the Attorney General's statutory role or the remedies that [s]he is empowered to seek").

The tolling agreement was a mutually beneficial and common arrangement pursuant to which OAG agreed to hold off suing, and Alan Garten, on behalf of the Trump Organization, agreed to toll the statute of limitations. All defendants received the benefit of the bargain; OAG held off suing. OAG is entitled to its benefit of the bargain, the tolling of the statute of limitations, for the limited agreed-upon time, as against anyone it could have sued for the matters at issue at the time at which the agreement was executed. OAG clearly did not intend to permit defendants' principals to evade the tolling agreement based on a technicality contrary to the spirit of the agreement and controlling caselaw.

Statute of Limitations

As a general rule, statutes of limitation start running when a claim accrues, that is, when it can be sued upon. In arguing that OAG's causes of action are untimely, defendants incorrectly assert that the statute of limitations starts running on the date the parties entered into the subject agreements, or when the loans closed. However, the First Department did not use the word "closed," it used the word "completed." Trump, 217 AD3d at 611. Obviously, the transactions were not "completed" while the defendants were still obligated to, and did, annually submit current SFCs to comply with the terms of the loan agreements.

Defendants further assert that any continuing documentation provided after the agreements were entered into, or when the loans closed, is of no consequence if the proceeds were distributed prior to July 2014. NYSCEF Doc. No. 835 at 18. This argument is unavailing. As OAG asserts, each submission of an SFC after July 13, 2014, constituted a separate fraudulent act. Indeed, each submission of a financial document to a third-party lender or insurer would "requir[e] a separate exercise of judgment and authority," triggering a new claim. Yin Shin Leung Charitable Found. v Seng, 177 AD3d 463, 464 (1st Dept 2019) (finding continuous series of wrongs each of which gave rise to its own claim).

Defendants mistakenly assert that if a loan agreement was entered into and its proceeds were dispersed prior to the applicable statute of limitations, then a claim arising out of submitting any subsequent contractually required financial documentation is also untimely, irrespective of when that documentation is submitted. Defendants would have this Court apply a bizarre, invented, inverted form of the "relation back" doctrine, pursuant to which if one aspect of fraudulent

business conduct falls outside the statute of limitations, then all subsequent aspects of fraudulent conduct also fall outside the statute, no matter how inextricably intertwined.

Of course, this is contrary to controlling case law, which holds that a cause of action accrues at the time "when one misrepresents a material fact." Graubard Mollen Dannett & Horowitz v Moskovitz, 86 NY2d 112, 12 (1995). Moreover, even the plain language of Executive Law § 63(12) states: "[t]he term 'repeated' as used herein shall include repetition of any *separate and distinct fraudulent or illegal act*" (emphasis added). Clearly, the submission of each separate fraudulent SFC is a distinct fraudulent act.

OAG is not challenging the loans, the closings, or the disbursements; it is challenging defendants' submissions of financial documents containing false and misleading information. Thus, any SFC that was submitted after July 13, 2014, falls within the applicable statute of limitations. CW Capital Cobalt VR Ltd. v CW Capital Invs., LLC, 195 AD3d 12, 19-20 (1st Dept 2021) (each instance of wrongful conduct a "separate, actionable wrong" giving "rise to a new claim").

Materiality

It is settled that a standalone cause of action under Executive Law § 63(12) does not require a demonstration of materiality but merely that an "act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." People v Gen. Elec. Co., 302 AD2d 314, 314-315 (1st Dept 2003) (holding that, unlike GBL § 349, plaintiff need not prove "the challenged act or practice 'was misleading in a material way'").

Although the Domino's court found that "evidence regarding falsity, materiality, reliance and causation plainly is *relevant* to determining whether the Attorney General has established that the challenged conduct has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud" (Domino's at 11), every Appellate Division and the New York Court of Appeals now hold that materiality and scienter are not requirements for liability under § 63(12).

However, as discussed *infra*, although materiality is required under the second through seventh causes of action, it is not required under a standalone cause of action under Executive Law § 63(12), the OAG's first cause of action.

Defendants argue that the SFCs were not materially misleading, claiming, *inter alia* that: (1) "[t]here is no such thing as objective value"; (2) "a substantial difference between valuation in the SOFCs and appraisal, per se, is not evidence of inflated values"; (3) there is nothing improper about using "fixed assets" valuations as opposed to using the current market valuation approach; and (4) it was proper to include "internally developed intangibles, such as the brand premium used in the valuation of President Trump's golf clubs, in personal financial statements." NYSCEF Doc No. 1292 at 20-23.

Thus, defendants essentially argue that value is inherently subjective; that because internal brand valuations are in the eye of the beholder (here, Donald Trump), they cannot be overvalued. Defendants argue that "[n]o bank or underwriter would have reasonably been materially misled by the alleged misstatements or omissions in the SOFCs and other information the Defendants

made available to their counterparties because no sophisticated counterparty would have considered the SOFCs and other information provided by the Defendants alone as material to extend credit or set an interest rate, or issue an insurance policy or price a risk, without doing their own due diligence." NYSCEF Doc. No. 835 at 45.

Defendants also argue: "[i]t follows that if the user [of the SFCs] is in possession of the correct information, then the financial statements are not materially misstated." Id. at 39. Defendants' stance is, practically speaking, that they may submit false SFCs so long as the recipients know, from their own due diligence, that the information is false.

Accepting defendants' premise would require ignoring decades of controlling authority holding that financial statements and real property valuations are to be judged objectively, not subjectively. FMC Corp. v Unmack, 92 NY2d 179, 191 (1998) ("*objectively* reasonable conclusion, drawn by a competent and experience appraiser, was based on credible evidence" that demonstrated "property was overvalued") (emphasis added); Assured Guar. Mun. Corp. v DLJ Mortg. Cap. Inc., 44 Misc 3d 1206(A) (Sup Ct, NY County 2014) ("Credit Suisse is reading this as a subjective standard, dependent on Assured's expectations. Credit Suisse is wrong. It is well settled that this is an objective standard").

Moreover, courts have long found that "generally, it is the 'market value' which provides the most reliable valuation for assessment purposes." Great Atl. & Pac. Tea Co. v Kiernan, 42 NY2d 236, 239 (1977); Consol. Edison Co. of New York v City of New York, 33 AD3d 915, 916 (2d Dept 2007) ("the standard for assessment remains market value"), affd 8 NY3d 591. Beauty may be in the eye of the beholder, but value is in the eye of the marketplace.

Further, defendants' assertion that the discrepancies between their valuations and the OAG's are immaterial is nonsense. What OAG has established, in many cases by clear, indisputable documentary evidence (as discussed *infra*), is not a matter of rounding errors or reasonable experts disagreeing. OAG has submitted conclusive evidence that between 2014 and 2021, defendants overvalued the assets reported in the SFCs between 17.27-38.51%; this amounts to a discrepancy of between $812 million and $2.2 billion dollars. NYSCEF Doc. No. 766 at 70. Even in the world of high finance, this Court cannot endorse a proposition that finds a misstatement of at least $812 million dollars to be "immaterial." Defendants have failed to identify any authority for the notion that discrepancies of the magnitude demonstrated here could be considered immaterial.

The Second through Seventh Causes of Action

The Second, Third, Fourth, Fifth, Sixth, and Seventh causes of action allege violations of Executive Law § 63(12) based on underlying violations of the New York Penal Law prohibiting falsification of business records, issuance of false financial statements, and insurance fraud.

Liability under New York Penal Law § 175.05 (falsifying business records in the second degree) requires that a person "[m]akes or causes a false entry in the business records of an enterprise."

Liability under New York Penal Law § 175.45 (issuing a false financial statement) requires that a person "represents in writing that a written instrument purporting to describe a person's financial

condition or ability to pay as of a prior date is accurate with respect to such person's current financial condition or ability to pay, whereas [that person] knows it is materially inaccurate in that respect."

Liability under New York Penal Law § 176.05 (insurance fraud) requires that a person submitted an application for insurance either: (1) knowing that it "contain[ed] materially false information concerning any fact material thereto"; or (2) "conceal[ed], for the purpose of misleading, information concerning any fact material thereto."

Accordingly, unlike a standalone cause of action under Executive Law § 63(12). the second through seventh causes of action require demonstrating some component of intent and materiality. People v Alamo Rent A Car, Inc., 174 Misc 2d 501, 505 (Sup Ct, NY County 1997) ("As in all other situations requiring *mens rea*, however, petitioners may prove, by reference to facts and circumstances surrounding the case, that respondents knew that their conduct was unlawful. Moreover, petitioners need not prove respondents acted with an 'evil motive, bad purpose or corrupt design'") (internal citations omitted).

OAG has demonstrated that there remain, at the very least, disputed issues of fact as to whether defendants violated these statutes, intentionally and materially. Thus, there are issues of fact as to causes of action two through seven that require a trial.

The Court has considered defendants' remaining arguments and finds them to be unavailing and/or non-dispositive.

Accordingly, defendants' motion for summary judgment dismissing every cause of action is denied in its entirety.

OAG'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ITS FIRST CAUSE OF ACTION

Summary Judgment Burden on Standalone Executive Law § 63(12) Cause of Action

OAG moves for partial summary judgment, seeking to hold defendants liable under OAG's first cause of action, for fraud under Executive Law § 63(12).

As this Court has noted *ad nauseum*, Executive Law § 63(12) "authorizes the Attorney General to bring a special proceeding against any person or business that engages in repeated or persistent fraudulent or illegal conduct, while broadly construing the definition of fraud so as to include acts characterized as dishonest or misleading and eliminating the necessity for proof of an intent to defraud." People v Apple Health & Sports Club, Ltd., Inc., 206 AD2d 266-267 (1st Dept 1994).

As OAG's first cause of action, the only one upon which it moves for summary judgment, alleges a standalone violation of Executive Law § 63(12), OAG need only prove: (1) the SFCs were false and misleading; and (2) the defendants repeatedly or persistently used the SFCs to transact business.

This instant action is essentially a "documents case." As detailed *infra,* the documents here clearly contain fraudulent valuations that defendants used in business, satisfying OAG's burden to establish liability as a matter of law against defendants. Defendants' respond that: the documents do not say what they say; that there is no such thing as "objective" value; and that, essentially, the Court should not believe its own eyes.[9]

The defenses Donald Trump attempts to articulate in his sworn deposition are wholly without basis in law or fact. He claims that if the values of the property have gone up in the years since the SFCs were submitted, then the numbers were not inflated at that time (i.e.; "But you take the 2014 statement, if something is much more valuable now – or, I guess, we'll have to pick a date which was a little short of now. But if something is much more valuable now, then the number that I have down here is a low number"). NYSCEF Doc. No. 1363 at 69-75). He also seems to imply that the numbers cannot be inflated because he could find a "buyer from Saudi Arabia" to pay any price he suggests.[10] Id. at 30-33, 60-62, 79-80.

The Trump Tower Triplex

This Court takes judicial notice that the Trump Tower apartment in which Donald Trump resided for decades (the "Triplex") is 10,996 square feet. NYSCEF Doc. No. 816 at 2. Between 2012-2016, Donald Trump submitted SFCs falsely claiming that the Triplex was 30,000 square feet, resulting in an overvaluation of between $114-207 million dollars. NYSCEF Doc. Nos. 782 at Rows 833-834, 1028, 783 at Rows 799-800, 1199, 784 at Rows 843-844, 785 at Rows 882-883, 789 at Row 913, 817. The misrepresentation continued even after defendants received written notification from *Forbes* that Donald Trump had been overestimating the square footage of the Triplex by a factor of three.[11]

In opposition, defendants absurdly suggest that "the calculation of square footage is a subjective process that could lead to differing results or opinions based on the method employed to conduct the calculation.[12]" NYSCEF Doc. No. 1293 at 20. Well yes, perhaps, if the area is rounded or oddly shaped, it is possible measurements of square footage could come to slightly differing results due to user error. Good-faith measurements could vary by as much as 10-20%, not 200%.

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[9] As Chico Marx, playing Chicolini, says to Margaret Dumont, playing Mrs. Gloria Teasdale, in "Duck Soup," "well, who ya gonna believe, me or your own eyes?"

[10] This statement may suggest influence buying more than savvy investing.

[11] Three days after receiving a written inquiry from *Forbes*, Trump Organization Vice President, Amanda Miller, sent an email to Trump Organization Executive Vice President and Chief Legal Officer, Alan Garten, indicating that she "spoke to Allen W[eisselberg] re: [Trump World Tower and Trump Tower] – we are going to leave those alone." NYSCEF Doc. No. 821. Although OAG need not show intent to deceive under a standalone § 63(12) cause of action, this directive to continue to use a grossly inflated number despite clear knowledge it is false demonstrates the repetitive and ongoing nature of defendants' propensity to engage in fraud.

[12] Despite this assertion in their motion papers, counsel for defendants, Christopher Kise, Esq, conceded during oral argument held on September 22, 2023, that square footage is, in fact, an objective number.

A discrepancy of this order of magnitude, by a real estate developer sizing up his own living space of decades, can only be considered fraud.[13]

OAG unquestionably satisfies its two-prong burden of demonstrating the SFCs from 2012-2016 calculated the value of the Triplex based on a false and misleading square footage, and that some of the defendants repeatedly and persistently used the SFCs to transact business.

Seven Springs Estate

Defendant Seven Springs LLC owns over 200 acres of contiguous land in the towns of Bedford, New Castle and North Castle in Westchester County, New York.

In 2000, non-party the Royal Bank of Pennsylvania appraised the "as is" market value of Seven Springs to be $25 million if converted to residential development. NYSCEF Doc. No. 825. In 2006, the same bank performed a new appraisal, which showed Seven Springs had an "as is" market value of $30 million. NYSCEF Doc. No. 826.

In 2012, Seven Springs LLC received another appraisal that estimated a six-lot subdivision on the New Castle portion of the property to have a fair market value of approximately $700,000 per-lot. NYSCEF Doc. No. 829 at 203-206.

In July 2014, because the Trump Organization was considering donating a conservation easement, it retained Cushman & Wakefield to provide a "range of value" of the Seven Springs property. NYSCEF Doc. Nos. 830, 831. Cushman & Wakefield's appraiser, David McArdle, analyzed the sale of eight lots in Bedford, six lots in New Castle, and ten lots in North Castle and determined the fair market value for all 24 lots was approximately $30 million. NYSCEF Doc. No. 831, 832.

Notwithstanding receiving market values from professional appraisals in 2000, 2006, 2012, and 2014 valuing Seven Springs at or below $30 million, Donald Trump's 2011 SFC reported the value to be $261 million, and his 2012, 2013 and 2014 SFCs reported the value to be $291 million.[14] NYSCEF Doc. Nos. 769, 770, 771, 772.

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[13] In fact, OAG demonstrates that as of 2012, no apartment sold in New York City had ever approached the price at which defendants valued the Triplex, noting that the highest overall sale at that time was $88 million for a Central Park West penthouse. The SFCs valued the Triplex at a staggering $180,000,000-$327,000,000 for the years 2012-2016. NYSCEF Doc. No. 1 at ¶276.

[14] The statutes of limitations have run for all claims that accrued before July 13, 2014. However, although not actionable by themselves, evidence of fraud that predates July 13, 2014, may still be used as evidence in evaluating OAG's request for permanent injunctive relief, wherein the Court must determine whether there has been "a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d 490, 496-97 (2016) (detailing standard for permanent injunctive relief under Executive Law 63(12) and "reject[ing] defendants' arguments that the Attorney General must show irreparable harm in order to obtain a permanent injunction").

In early 2016, Cushman & Wakefield performed another appraisal of Seven Springs, which included the planned development, and determined that as of December 1, 2015, the entire parcel was worth $56.6 million. NYSCEF Doc. Nos. 824 at 9; 875; 876.

Even giving defendants the benefit of the $56.6 million figure as of December 1, 2015, the value submitted on Donald Trump's 2014 SFC was inflated by over 400%. Accordingly, OAG has demonstrated liability for the false 2014 SFC for fraudulently inflating the value of Seven Springs.

Trump Park Avenue

Trump Park Avenue is a residential building included as an asset on Donald Trump's SFCs for the years 2011-2021. NYSCEF Doc. Nos. 769-779. In 2011, 12 of the unsold residential condominium units were subject to New York City's rent regulation laws. NYSCEF Doc. No. 948 at 3. By 2014, nine units remained subject to rent restrictions. NYSCEF Doc. No. 966. By 2020, six units remained subject to rent restrictions. NYSCEF Doc. No. 971.

A 2010 appraisal performed by the Oxford Group valued the 12 rent-stabilized units at $750,000 total, or $62,500 per unit. NYSCEF Doc. No. 952. A 2020 appraisal performed by Newmark Knight Frank valued the six units that remained subject to stabilization at $22,800,090 total, or $3,800,315 per unit. NYSCEF Doc. No. 972.

Notwithstanding, for the years 2014-2021, the Trump Organization submitted SFCs that valued these rent-restricted units as if they were unencumbered, inflating the value of each unit between as much 700% (in 2014) and 64% (in 2021). NYSCEF Doc. Nos. 772-779.

In an unsuccessful attempt to rebut OAG's prima facie demonstration, defendants proffer that the units are not overvalued because "the rent-stabilized units have the potential at some point in the future to be converted into unencumbered (by rent stabilization) units."[15] NYSCEF Doc. No. 1292 at 57. They further concede that "[t]his is the assumption the owner made when assessing potential asset pricing or value." Id.

[15] As every New Yorker knows, rent regulated units may be passed on from one generation to the next in perpetuity.

However, the SFCs are required to state "current" values, not "someday, maybe" values. At the time defendants provided the subject SFCs to third parties they unquestionably falsely inflated the value of the units based on a false premise that they were unrestricted.[16]

40 Wall Street

The Trump Organization, through defendant 40 Wall Street LLC, owns a ground lease at 40 Wall Street and pays ground rent to the landowner.

In 2010, Cushman & Wakefield appraised the Trump Organization's interest in 40 Wall Street at $200 million. NYSCEF Doc. Nos. 878-79. Cushman & Wakefield appraised again in 2011 and 2012, reaching valuations of between $200 and $220 million. NYSCEF Doc. Nos. 881-82. The Trump Organization possessed and was familiar with these appraisals. NYSCEF Doc. Nos. 817 at 135-138; 883.

Despite these appraisals, the 2011 and 2012 SFCs valued the Trump Organization's interest in the property at $524.7 million and $527.2 million, respectively, an overvaluation of more than $300 million each year.[17] NYSCEF Doc. Nos. 769, 770.

In 2015, Cushman & Wakefield once again appraised the property, and valued it at $540 million.[18] NYSCEF Doc. No. 887. Notwithstanding this appraised value, the 2015 SFC listed the value of 40 Wall Street at $735.4 million.[19] NYSCEF Doc. No. 773.

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[16] Mazars accountant Donald Bender testified that when he asked Jeffrey McConney, "Do you have any other appraisals?", Jeffrey McConney stated "I have nothing else," demonstrating an intent to conceal or mislead the accountants. NYSCEF Doc. No. 1262 at 243.

Further, Patrick Birney, a Trump Organization employee working directly under Jeffrey McConney, conceded that the Trump Organization maintained a spreadsheet for day-to-day operations on the Trump Park Avenue offering plan that included both the offering plan prices *and* the current market values, but that the Trump Organization concealed its own actual market estimates from Mazars by omitting the market value column in its spreadsheet and providing Mazars with only the offering plan prices. NYSCEF Doc. No. 946.

[17] Although any liability arising out of the submission of the 2011 and 2012 SFCs is time barred; as previously discussed, these submissions may be considered as evidence in support of OAG's request for injunctive relief.

[18] OAG plausibly asserts that this $540 million is also inflated; however, for purposes of this motion, OAG does not dispute the number, and argues that, even if the Court were to accept defendants' number as accurate, the 2015 SFC was still materially false, as it stated the value as nearly $200 million more than the $540 million appraisal. NYSCEF Doc. No. 766 at n 7.

[19] An email exchange dated August 4, 2014, between Allen Weisselberg and his son, Jack Weisselberg, a Ladder Capital employee, discusses the 2015 $540 million Cushman & Wakefield appraisal. NYSCEF Doc. No. 888. Notwithstanding direct knowledge of it, the 2015 SFC valued 40 Wall Street at nearly $200 million more. NYSCEF Doc. No. 773.

Defendants assert that overvaluations of two hundred million dollars are immaterial, as the "NYAG has produced no evidence to suggest... that Ladder Capital would have been uncomfortable allowing President Trump to guarantee the 40 Wall Street Loan if his net worth was only $1.9 billion, as the NYAG contends." NYSCEF Doc. No. 835 at 48. They further emphasize that "Ladder Capital has received in excess of $40 million in interest and 40 Wall Street LLC has never defaulted under the Loan."[20] Id.

Defendants' argument misses the mark. As has been explained to defendants many times, in many legal proceedings, and in painstaking detail, "where, as here, there is a claim based on fraudulent activity [under Executive Law 63(12)], disgorgement may be available as an equitable remedy, *notwithstanding the absence of loss to individuals or independent claims for restitution.*" Ernst & Young at 569 (emphasis added). Accordingly, it is not significant that the banks made money (or did not lose money)[21], or that they would have done business with the Trump Organization notwithstanding. The law is clear that the only requirements for liability to attach under a standalone Executive Law § 63(12) cause of action are (1) a finding that the SFCs were false and misleading; and (2) that defendants repeatedly or persistently used the SFCs to conduct business.

Accordingly, OAG has demonstrated liability for the false valuation of 40 Wall Street in the 2015 SFC.

Mar-a-Lago

Donald Trump purchased Mar-a-Lago in 1985. In 1993, he sought, and obtained, permission from the Town of Palm Beach to turn the property into a social club (NYSCEF Doc. No. 900), and on August 10, 1993, he entered into a "Declaration of Use Agreement" by which he agreed "the use of Land shall be for a private social club" and that "[a]ny additional uses of the Land shall be subject to approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Landmarks Preservation Commission of the Town, the Architectural Review Commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or any agencies under the foregoing governmental authorities." NYSCEF Doc. No. 915.

In 1995, Donald Trump signed a "Deed of Conservation and Preservation Easement" in which he gave up his right to use Mar-a-Lago for any purpose other than as a social club (the "1995 Deed"). NYSCEF Doc. No. 901. In 2002, Donald Trump signed a "Deed of Development Rights." NYSCEF Doc. No. 902. As part of granting a conversation easement to the National

[20] The defendant borrowers did not default on any loans; but we only know that with hindsight. Markets are volatile, and borrowers come in all shapes and sizes. The next borrower, or the one after that, might default, and if its SFCs are false, the lender might unfairly be left holding the bag. This will distort the lending marketplace and deprive other potential borrowers of the opportunity to obtain loans and create wealth.

[21] The subject loans made the banks lots of money; but the fraudulent SFCs cost the banks lots of money. The less collateral for a loan, the riskier it is, and a first principal of loan accounting is that as risk rises, so do interest rates. Thus, accurate SFCs would have allowed the lenders to make even more money than they did.

Trust for Historic Preservation, Donald Trump agreed that "Trump intend[s] to forever extinguish [his] right to develop or use the Property for any purpose other than club use" (the "2002 Deed"). The 2002 Deed also specifically "limits changes to the Property including, without limitation, the division or subdivision of the Property for any purpose, including use as single family homes, the interior renovation of the mansion, which may be necessary and desirable for the sale of the Property as a single family residential estate, the construction of new buildings and the obstruction of open vistas." Id. In exchange for granting the easement, Mar-a-Lago was taxed at a significantly lower rate (the club rate) than it otherwise would have been (the private home rate). NYSCEF Doc. No. 903.

From 2011-2021, the Palm Beach County Assessor appraised the market value of Mar-a-Lago at between $18 million and $27.6 million. NYSCEF Doc. No. 905.

Notwithstanding, the SFCs' values do not reflect these land use restrictions. Donald Trump's SFCs for 2011-2021 value Mar-a-Lago at between $426,529,614 million and $612,110,496, an overvaluation of *at least 2,300%*, compared to the assessor's appraisal. NYSCEF Doc. Nos. 769-779.

In an attempt to rebut the OAG's demonstration, defendants rely on the opinion affidavit of Lawrence Moens, who they purport is "the most accomplished and knowledgeable ultra-high net worth real estate broker in Palm Beach, Florida."[22] Moens claims that "the SOFC were and are appropriate and indeed *conservative*." NYSCEF Doc. No. 1292 at 35-36 (emphasis added). The Moens' affidavit states in a conclusory fashion that because he believes "this unique property offers to an elite purchaser the unparalleled opportunity to own an exclusive and extensive family compound in the most desirable sections of Palm Beach... the valuations in the SOFC were reasonable and below my estimate for the market value of the property each year." NYSCEF Doc. No. 1435. Moreover, Moens opines that "[i]f Mar-A-Lago was available for sale, I am confident that in short order, I would be in a position to produce a ready, willing and able buyer who would have interest in securing the property for their personal use as a residence, or even, their own club." Id. at 29. Critically, Moens does not opine *at what price* he is "confident" he could find a buyer (although he opines separately, without relying on any objective evidence, that he believes that as of 2023 the property is worth $1.51 *billion*[23]).

It is well-settled that: "[w]here the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation, however, the opinion should be given no probative force and is insufficient to withstand summary judgment." Diaz v New York Downtown Hosp., 99 NY2d 542, 544 (2002); see also Gardner v Ethier, 173 AD2d 1002, 1003-4 (3d Dept 1991) ("the expert

[22] At oral argument, his domain of expertise was enlarged to nationwide status.

[23] In his sworn deposition, when asked "[w]ho were the dozen or so [qualified] buyers that you were referencing in your report, Lawrence Moens replied: "I could dream up anyone from Elon Musk to Bill Gates and everyone in between. Kings, emperors, heads of state. But with net worths in the multiple billions. I don't know how many people in the world have a net worth of more than $10 billion, but I think it's quite a number. There are a lot." NYSCEF Doc. No. 1428 at 184-185. Obviously, this Court cannot consider an "expert affidavit" that is based on unexplained and unsubstantiated "dream[s]."

affidavit is also inadmissible because it is conclusory and the views are apparently based to a great extent on hearsay statements from unspecified witnesses as well as upon speculations on the part of the expert"). Accordingly, defendants' reliance on the Moens affidavit is unpersuasive and certainly insufficient to rebut OAG's prima face case.

Defendants further imply that they may ignore the plain language of the 2002 Deed restrictions because they would likely be able to use the Florida judicial system to get out of their contractual requirements; they further assert that because they may successfully breach their contract in the future, they were not required to consider the restrictions of the 2002 Deed when valuing the property. NYSCEF Doc. 1292 at 48-51. This argument is wholly without merit. At the time in which the defendants submitted the SFCs, the restrictions were in effect, and any valuations represented to third-parties must have incorporated those restrictions; failure to do so is fraud. Assets values that disregard applicable legal restrictions are by definition materially false and misleading.

Accordingly, OAG has demonstrated liability for the false valuation of Mar-a-Lago as appears in the SFCs from 2014-2021.

Aberdeen

The Trump Organization owns a golf course located in Aberdeen, Scotland ("Aberdeen"). The value assigned to Aberdeen was comprised of two parts: a value for the golf course and a value for the development of the non-golf course property, the latter of which is the focus here. Developing any of the non-golf course property required that the local Scottish authorities approve any proposed plans.

From 2011-2014, Donald Trump's SFC reported that he had "received outline planning permission [from local Scottish authorities] in December 2008 for... a residential village consisting of 950 holiday homes and 500 single family residences and 36 golf villas." NYSCEF Doc. Nos. 769-776.

The Trump Organization had "outline planning permission" to build a total of 1,486 homes. Notwithstanding, the 2014-2018 SFCs valuations of Aberdeen assumed the Trump Organization had received approval to build 2,500 homes, despite never having received such approval. NYSCEF Doc. Nos. 772-776, 907.

Additionally, the approval of the 950 holiday homes and 36 golf villas came with severe restrictions on their use: they could be used solely as rental properties and could be rented for no more than 12 weeks in any calendar year. NYSCEF Doc. No. 908 at 13. The Trump Organization submitted financial documentation to the local Scottish authorities representing that these short-term rentals would not be profitable and therefore would not add any value to Aberdeen. NYSCEF Doc. Nos. 909 at 36, 910 at 7. Consequently, the only profitable development of Aberdeen would have been the 500 single family residences. In July 2017, non-party Ryden LLP, acting on behalf of the Trump Organization, prepared a development appraisal for Aberdeen wherein it assessed the profit from developing 557 homes and estimated profits in the range of £16,525,000-£18,546,000. NYSCEF Doc. No. 1231 at 10.

In May 2018, the Trump Organization applied to the Aberdeen City Council to reduce the scope of the development project to 550 dwellings, consisting of 500 private residences, 50 leisure/resorts units, and zero holiday homes (having determined they were not profitable). NYSCEF Doc. No. 911. In September 2019, the Aberdeen City Council approved the proposal for a reduction in the proposed development, but restricted the 50 leisure/resort units, as they had the holiday homes, to be "occupied on a holiday letting or fractional ownership basis only and for no other purposes whatsoever including use as a permanent residential unit... ." NYSCEF Doc. No. 907 at 7.

Notwithstanding, the 2019 SFC, finalized a month after the latest approval, derived a value based on the assumption that 2,035 private residential homes could be developed. Adjusting the values to reflect the permissible 500 private residences reduces the value of the Aberdeen undeveloped property as reflected in the 2019 SFC by £164,196.704. NYSCEF Doc. No. 777 at 16, 789 at Cells G561-619, 912.

Although defendants wholly fail to address Aberdeen in any of their three memos of law, in their response to OAG's statement of material facts, they state that "Defendants dispute the veracity of the appraisal because President Trump, as a land developer, took optimistic views of potential future value which is not contemplated in the appraisal, thereby undervaluing Trump Aberdeen." NYSCEF Doc. No. 1293 at 82-83. For all the reasons discussed *supra*, this defense fails.

Accordingly, OAG has demonstrated liability for the false valuation of Aberdeen as appears in the SFCs from 2014-2019.

US Golf Clubs

Donald Trump owns or leases a number of golf clubs across the United States and abroad that are included as assets on his SFCs. NYSCEF Doc. Nos. 769-779. The value for these golf clubs is provided in the aggregate in the SFCs, although supporting accounting spreadsheets evidence the breakdown of the values assigned to each club. NYSCEF Doc. Nos. 781-791.

The "Trump Brand Premium"

The evidence indicates that for the years 2013-2020, the SFCs relied on values that included a 15% or 30% "premium" based on the "Trump brand" for the following seven golf clubs: Trump National Golf Course ("TNGC") Jupiter, TNGC LA, TNGC Colts Neck, TNGC Philadelphia, TNGC DC, TNGC Charlotte, and TNGC Hudson Valley. NYSCEF Doc. Nos. 783-790. However, the SFCs for those years (and, indeed, all the years before this Court), also contained express language stating: "The goodwill attached to the Trump name has significant value that has *not* been reflected in the preparation of this financial statement." NYSCEF Doc. Nos. 769-779 (emphasis added). Accordingly, the SFCs "double dip," both purporting not to include a brand premium while simultaneously including one of 15% or 30%.

In opposition, defendants submit the affidavit of Eli Bartov, an accounting professor at New York University, who distinguishes between overall brand value and brand value ascribed to individual golf courses. His point, ensconced in numerous lines of academic jargon, seems to be that defendants said that they were eschewing the former and opting only for the latter. NYSCEF Doc. No. 1378 at 14-15. This is a red herring and factually incorrect. The SFCs

clearly state that they do not include a brand value for *any* of the properties included in the SFCs; indeed, the SFCs emphatically declare that "[t]he goodwill attached to the Trump name has significant financial value *that has not been reflected in the preparation of this financial statement.*" NYSCEF Doc. Nos. 769-779 (emphasis added). Perhaps Donald Trump could have ascribed a brand value to golf courses that he viewed as "special," but he was obligated to disclose those exceptions when he represented that the SFCs did not reflect his brand value.

TNGC Briarcliff and TNGC LA

The valuations of TNGC Briarcliff and TNGC LA were each comprised of a value for the golf course and a value for the undeveloped land. As the Trump Organization was considering donating a conservation easement over both properties, they had both properties appraised.

An April 2014 appraisal valued the golf club portion of TNGC Briarcliff at $16,500,000; later that same year, Donald Trump valued the golf club portion of TNGC Briarcliff at $73,430,217, *an inflation of more than 300%*, in his SFC. NYSCEF Doc. Nos. 923 at 147; 785 at Row 257. A 2015 appraisal valued the golf club portion of TNGC LA at $16,000,000 as of December 26, 2014; the 2015 SFC valued the golf club portion of TNGC LA at $56,615,895, *an inflation of more than 200%.* NYSCEF Doc. Nos. 924 at 151; 785 at Row 386.

In an attempt to rebut this strong showing of fraud, defendants argue that they were not obligated to use market value, but, instead, were permitted to use the "fixed assets" approach to valuation, pursuant to which defendants may "value" a property by aggregating the money spent to acquire and maintain a property. NYSCEF Doc. No. 1292. They further rely on the Bartov affidavit, which states, in wholly conclusory fashion that: "[t]he assertion that 'Using fixed assets approach does not present the golf clubs at their estimated current value because the approach ignores market conditions and the behavior of informed buyers and sellers' is unsubstantiated and false." NYSCEF Doc. No. 1378 at 29.

Bartov is incorrect. Each of the corresponding SFCs include representations that "[a]ssets are stated at their estimated current values..." NYSCEF Doc. Nos. 769-779.[24] Accordingly, it is false and misleading to use a fixed-assets evaluation, which is completely different. The price for which you purchase property is not necessarily the price for which you can sell it. The latter, not the former, matters to lenders who want adequate collateral.

The Membership Liabilities

As part of the purchase of several of the golf club properties, Donald Trump agreed to assume the obligation to pay back refundable non-interest-bearing long-term membership deposits. However, notwithstanding that these liabilities must be satisfied in the future, the SFCs from 2012-2021 value them at $0. NYSCEF Doc. Nos. 769-779. This is false; they are a liability in the millions of dollars.

[24] In their response to OAG's statement of material facts, defendants concede that "GAAP defines Estimated Current Value as 'the amount at which the item could be exchanged between a buyer and seller, each of whom is well informed and willing, and neither of whom is compelled to buy or sell." NYSCEF Doc No. 1293 at 17.

However, the SFCs all state: "The fact that Mr. Trump will have the use of these funds for that period without cost and that the source of repayment will most likely be a replacement membership has led him to value this liability at zero." See e.g., NYCSCEF Doc. No. 772.

Although it was false to report the membership liabilities as $0, it was not, under the circumstances, *misleading*, as the SFCs state that the reason for so doing. Accordingly, OAG cannot prevail on liability as a result of the failure to report the membership liabilities.

Yet, as discussed *supra*, OAG has demonstrated liability for submitting fraudulent SFCs in 2014-2020 that falsely value the aforementioned US Golf Clubs based on undisclosed brand premiums and failure to report "current" values.

Vornado Partnership Properties

Donald Trump has a 30% limited partnership interest with non-party Vornado Realty Trust in entities that own office buildings in New York City (at 1290 Avenue of the Americas, hereinafter "1290 AOA") and San Francisco at 555 California Street.

Cash/Liquid Classification

Donald Trump's 30% limited partnership stake does not permit him to use or withdraw funds held by the partnerships. NYSCEF Doc. Nos. 916, 917. Notwithstanding, Donald Trump and his trustees classified his 30% interest in the Vornado partnership as a liquid/cash asset on his SFCs for the years 2013-2021. NYSCEF Doc. No. 771-779. This was even though it is "undisputed" by defendants that Donald Trump does not have "the right to use or withdraw [these] funds." NYSCEF Doc. No. 1293 at ¶387-388.

Defendants assert that "[e]ven if the cash held in the partnership was misclassified and should have been reported elsewhere on the SOFCs as an asset (e.g., in the value of the partnership interest), it would not have inflated the total value of cash or President Trump's net worth reported on the SOFCs." NYSCEF Doc No. 1292 at 39.

This argument does not hold any water. Put simply, it was false and misleading for defendants to indicate that it had access to between $14,221,800 and $93,126,589 in liquid assets, sometimes nearly a third of the total cash it claimed, when in fact those assets were completely illiquid. NYSCEF Doc. No. 1293 ¶ 403.

The Appraisals

Cushman & Wakefield appraised the value of 1290 AOA at $2 billion as of November 1, 2012, and $2.3 billion as of November 1, 2016. NYSCEF Doc. No. 919 at 5-6.

However, Donald Trump's 2014 SFC calculated his 30% share based on a purported value of $3,078,338,462; his 2015 SFC was based on a purported value of $2,985,819,936; and his 2016 SFC was based on a purported value of $3,055,000,000. NYSCEF Doc. Nos. 784 at Rows 709-715, 785 at Rows 748-755, 785 at Rows 779-784. This resulted in overvaluations of Donald Trump's 30% interest in 1290 AOA of between $205-$233 million dollars for those years.

CBRE appraised 1290 AOA and determined its value at $2 billion as of October 7, 2021. NYSCEF Doc. No. 947. Nonetheless, the 2021 SFC was calculated based upon a purported value of $2,574,813,800, an overvaluation of Donald Trump's 30% share by $172 million dollars. NYSCEF Doc. No. 791 at Row 918.

The instant motions do not task this Court with determining which appraisals are the most accurate, which would present issues of fact.[25] Rather, time and time again, the Court is not comparing one appraisal to another; it is comparing an independent professional appraisal to a pie-in-the-sky dream of concocted potential.

Accordingly, OAG has demonstrated liability for submitting fraudulent SFCs overvaluing Donald Trump's interest in the Vornado partnership in 2014-2016 and 2021.

Licensing Deals

Each of Donald Trump's SFCs from 2011-2021 has an asset category entitled "Real Estate Licensing Deals," which the SFC represents is value derived from "associations with others for the purpose of developing and managing properties" and the "cash flow that is expected to be derived... from these associations as their potential is realized." NYSCEF Doc. Nos. 769-779. The SFCs further state that "[i]n preparing [these] assessment[s], Mr. Trump and his management considered only situations which have evolved to the point where signed arrangements with the other parties exist and fees and other compensation which he will earn are reasonably quantifiable." Id.

Despite this express language, the SFCs from 2014-2018 and 2020-2021 include valuations of intra-organization deals, all between entities under the Trump Organization umbrella, in this category of assets. NYSCEF Doc. Nos. 1014, 1018, 1019, 1021, 1023, 1024, 1062, 1063, 1064. It was flatly false and misleading to include values of deals between Trump Organization entities while expressly representing in the SFCs that such assets included only valuations derived from "association with others." Improperly including these intra-organization deals resulted in an overvaluation of up to $224 million in 2014, $110 million in 2015, $120 million in 2016, $113 million in 2017, $115 million in 2018, $97 million in 2020, and $106 million in 2021. Id.

OAG has demonstrated liability for the false and misleading valuation of intra-company licensing deals on the SFCs from 2014-2018 and 2020-2021.

The Other Loans

OAG has established that defendants submitted false SFCs after July 13, 2014, pursuant to their other loan commitments. Defendants submitted SFCs to Deutsche Bank as part of their contractual obligations arising out of three different loans: (1) a Chicago Loan, undertaken by 401 North Wabash Venture LLC; (2) a Doral Loan, undertaken by Trump Endeavor LLC; and (3) an Old Post Office Loan, undertaken by Trump Old Post Office LLC. Defendants certified the accuracy of these SFCs to Deutsche Bank for the years 2014-2019 and 2021[26] as part of their

[25] Nor is this Court asked to determine Donald Trump's total wealth.

[26] The gap for 2020 may have been due to the COVID-19 pandemic.

contractual obligations. NYSCEF Doc. Nos. 1097, 1098, 1099, 1100, 1102, 1104, 1106, 1124, 1126, 1155, 1156, 1157.

The Individual Defendants

OAG has demonstrated liability on behalf of all the named individual defendants: (1) **Donald Trump**, as each and every SFC was issued on behalf of "Donald J. Trump"; (2) **Donald Trump, Jr.**, who, along with Allen Weisselberg, certified the accuracy of the SFCs for 2016-2020, and who singlehandedly certified the accuracy of the 2021 SFC (NYSCEF Docs. No. 808-813); (3) **Eric Trump**, who is the listed source for the Seven Springs valuation in 2014,[27] and who signed several guarantor compliance certificates in 2020 and 2021 for Donald J. Trump (NYSCEF Doc. No. 802); (4) **Allen Weisselberg**, who certified the accuracy of the SFCs from 2014-2021 (NYSCEF Doc. Nos. 806-812); (5) and **Jeffrey McConney**, who led the process of preparing all the SFCs since the 1990s[28] (NYSCEF Doc. No. 822 at 52-68).

The Entity Defendants

It is settled law that "[a] parent corporation will not be held liable for the torts or obligations of a subsidiary *unless it can be shown that the parent exercised complete dominion and control over the subsidiary*." Potash v Port Auth. of New York & New Jersey, 279 AD2d 562, 562 (2d Dept 2001) (emphasis added). Here, it is undisputed that Donald Trump, through one corporate form or another, exercised complete control over the umbrella of entities operating in furtherance of, or on behalf of, "the Trump Organization."

Defendants do not dispute that DJT Holdings LLC and DJT Holdings Managing Member LLC are entities that sit at the top of the Trump Organization's organizational chart and together own many of the Trump-affiliated entities that comprise the Trump Organization. DJT Holdings Managing Member LLC owns 100% of the Trump Organization and DJT Holdings LLC owns 100% of the Trump Organization LLC. NYSCEF Doc. Nos. 4, 819 at ¶1.

Accordingly, OAG has established liability on behalf of all the named entity defendants: (1) **The Trump Organization Inc.**, **the Trump Organization LLC**, **DJT Holdings LLC**, and **DJT Holdings Managing Member LLC**, as each participated in the preparation, submission and certification of the SFCs after July 13, 2014 through the acts of the individual defendants as described *supra*; (2) the **DJT Revocable Trust**, as both Donald Trump Jr. and Allen Weisselberg certified the accuracy of the 2016-2019 SFCs in their capacities as "Trustee, the Donald J. Trump Revocable Trust dated April 7, 2014, as amended" (NYSCEF Doc. No. 808); (3) **Trump Endeavor LLC**, which was the borrower on the Doral Loan, for which SFCs were submitted after July 13, 2014; (4) **401 North Wabash Venture LLC**, which was the borrower on a loan for "Trump Chicago," under which SFCs were required to be (and were) submitted

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[27] Eric Trump also reaffirmed the SFCs accuracy on July 9, 2019. NYSCEF Doc. Nos. 782 at Row 679, 783 at Rows 638-40, 784 at Row 660, 1183.

[28] Jeffrey McConney acknowledged his personal role in preparing supporting data for Donald Trump's SFCs beginning in 2011, testifying that: "I assemble the documentation" and that he would send both supporting data spreadsheets and backup documentation to the accountants. He further conceded that the supporting data spreadsheets were referred to as "Jeff's supporting data" or "Jeff's supporting schedule." NYSCEF Doc. No. 822 at 40, 67-68, 212, 294.

after July 13, 2014; (5) **Trump Old Post Office LLC**, as it was the borrower on the "Old Post Office" loan, under which SFCs were required to be (and were) submitted after July 13, 2014; and **Seven Springs LLC**, the borrowing entity (as described *supra*) under which SFCs were required to be (and were) submitted after July 13, 2014.

Injunctive Relief

OAG has prevailed on liability on its first cause of action pursuant to Executive Law § 63(12) as against all defendants: Donald J. Trump; Donald Trump, Jr.; Eric Trump; Allen Weisselberg; Jeffrey McConney; the DJT Revocable Trust; the Trump Organization Inc; the Trump Organization LLC; DJT Holdings LLC; DJT Holdings Managing Member LLC; Trump Endeavor 12 LLC; 401 North Wabash Venture LLC; Trump Old Post Office LLC; 40 Wall Street LLC; and Seven Springs LLC.

If liability is established under Executive Law § 63(12), the statute itself provides that the attorney general may obtain "an order enjoining the continuance of such business activity or of any fraudulent or illegal acts... and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of ... section one hundred thirty of the general business law...."

"[T]he Attorney General may obtain permanent injunctive relief under... Executive Law § 63(12) upon a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d at 496-97 (further stating "[t]his is not a 'run of the mill' action for an injunction, but rather one authorized by remedial legislation, brought by the Attorney-General on behalf of the People of the State and for the purposes of preventing fraud and defeating exploitation") (internal citations omitted).

Having found, at the commencement of the action, that OAG had preliminarily demonstrated defendants' "propensity to engage in persistent fraud," this Court appointed the Hon. Barbara S. Jones (ret.) as an independent monitor "to ensure there is no further fraud or illegality that violates § 63(12) pending the final disposition of this action." NYSCEF Doc. No. 194. On August 3, 2023, Judge Jones reported as follows:

> [S]ince my appointment I have reviewed material financial and accounting information submitted by the Trump Organization. As part of my review, I have made preliminary observations regarding certain current financial disclosures with respect to the Trump Organization's reporting of financial information. Specifically, I have observed that information regarding certain material liabilities provided to lenders – such as intercompany loans between or among Trust entities and Donald J. Trump, certain of the Trust's contingent liabilities, as well as refundable golf club membership deposits—has been incomplete. The Trust also has not consistently provided all required annual and quarterly certifications attesting to the accuracy of certain financial statements.

> In addition, annual audited financial statements for certain entities, prepared by an external accounting firm, list depreciation expenses. However, interim internally prepared financial statements provided to third parties for these same entities inconsistently report depreciation expenses.

NYSCEF Doc. No. 647. Even with a preliminary injunction in place, and with an independent monitor overseeing their compliance, defendants have continued to disseminate false and misleading information while conducting business. This ongoing flouting of this Court's prior order, combined with the persistent nature of the false SFCs year after year, have demonstrated the necessity of canceling the certificates filed under GBL § 130, as the statute provides. People v Northern Leasing, 70 Misc 3d 256, 279-80 (Sup Ct, NY County 2020) (denying a trial on the petition and ordering the LLC respondents to dissolve upon a finding of persistent fraud under Executive Law § 63(12)).

Having prevailed on liability on a standalone Executive Law § 63(12) cause of action, the Attorney General is entitled to the first two prayers for relief sought in her complaint: (1) canceling any certificate filed under and by virtue of the provisions of New York General Business Law § 130 for all the entity defendants found liable, as well as any other entity controlled or beneficially owned by the individual defendants found liable herein, which and who participated in or benefitted from the foregoing fraudulent schemes; and (2) appointing an independent monitor to oversee compliance, financial reporting, valuations, and disclosures to lenders, insurers, and tax authorities at the Trump Organization. NYSCEF Doc. No. 1 at 213.

Remaining Issues to be Determined at Trial

Anything presented in the parties' moving papers that this Court has not ruled upon in this Decision and Order, including determinations on liability for the second through seventh causes of action, the amount of disgorgement of profits to which OAG is entitled, and determinations on the third through ninth prayers for relief sought by OAG in its complaint, presents disputed issues of fact that shall proceed to trial.

Conclusion

For the reasons stated herein, it is hereby

ORDERED that defendants' motion for summary judgment is denied; and it is further

ORDERED that plaintiff's motion for sanctions is granted in part, to the extent of sanctioning Michael Madaio, Esq. (Habba Madaio & Associates, LLP), Clifford S. Robert, Esq. (Robert & Robert PLLC), Michael Farina Esq. (Robert & Robert PLLC), Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC), and Armen Morian (Morian Law PLLC) in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Decision and Order; and it is further

ORDERED that plaintiff's motion for partial summary judgment on its first cause of action is granted in part, to the extent of finding defendants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, the DJT Revocable Trust, the Trump Organization Inc, the Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC to be liable as a matter of law for persistent violations of Executive Law § 63(12); and it is further

ORDERED that any certificates filed under and by virtue of GBL § 130 by any of the entity defendants or by any other entity controlled or beneficially owned by Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney are canceled; and it is further

ORDERED that within 10 days of the date of this order, the parties are directed to recommend the names of no more than three potential independent receivers to manage the dissolution of the canceled LLCs; and it is further

ORDERED that the Hon. Barbara S. Jones (ret.) shall continue to serve as an independent monitor of the Trump Organization until further Court order; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

9/26/2023
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[X]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

v.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

Defendants.

Armen Morian, Esq.,

Attorney for Defendants.

Index No: 452564/2022

Engoron, J.S.C.

AFFIRMATION OF SERVICE

Motion Seq. No. 028

ARMEN MORIAN, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms the following statements to be true under the penalty of perjury:

1. I am principal attorney of the law firm of Morian Law PLLC, and am not a party to the above-captioned action.

2. On October 24, 2023, I served the within Notice of Appeal and Informational Statement, both dated October 24, 2023, together with a copy of the Decision and Order of the Supreme Court of the State of New York, New York County (Honorable Arthur F. Engoron,

J.S.C.), dated September 26, 2023, with Notice of Entry, upon the following parties by filing on NYSCEF, with a courtesy copy of the filing sent by email to the email addresses stated below:

Kevin C. Wallace, Esq. Colleen K. Faherty, Esq. Office of the New York State Attorney General 28 Liberty Street New York, New York 10005 kevin.wallace@ag.ny.gov colleen.faherty@ag.ny.gov *Counsel for Plaintiff*	
Alina Habba, Esq. Michael Madaio, Esq. Habba Madaio & Associates, LLP 112 West 34th Street, 17th & 18th Floors New York, New York 10120 ahabba@habbalaw.com mmadaio@habbalaw.com *Counsel for Defendants Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC*	Clifford S. Robert, Esq. Michael Farina, Esq. Rober & Robert PLLC 526 RXR Plaza Uniondale, New York 11556 Phone: (516) 832-7000 crobert@robertlaw.com mfarina@robertlaw.com *Counsel for Donald Trump, Jr., and Eric Trump*

Dated: New York, New York
October 24, 2023

Respectfully submitted,

ARMEN MORIAN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

v.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

Defendants.

Armen Morian, Esq.,

Attorney for Defendants.

Index No: 452564/2022

Engoron, J.S.C.

NOTICE OF APPEAL

Motion Seq. No. 028

PLEASE TAKE NOTICE THAT, pursuant to CPLR §§ 5511 and 5515, Armen Morian, Esq. (hereinafter referred to as "Mr. Morian") hereby appeals to the Appellate Division, First Department, from the Decision and Order on Motion by Hon. Arthur F. Engoron, J.S.C., dated September 26, 2023 (NYSCEF Doc. No. 1533), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on September 27, 2023, and served by Notice of Entry on September 27, 2023, which granted Plaintiff's motion for sanctions.

This appeal is taken from each and every part of the Order insofar as Mr. Morian is aggrieved. A copy of the Informational Statement pursuant to 22 NYCRR 1250.3(a) is attached hereto as Exhibit A.

Dated: New York, New York
October 24, 2023

Respectfully submitted,

ARMEN MORIAN
MORIAN LAW PLLC
60 East 42nd Street, Suite 4600
New York, New York 10165
(212) 787-3300
armenmorian@morianlaw.com
Attorneys for Non-Party
Armen Morian

EXHIBIT “A”

Supreme Court of the State of New York
Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

- against -

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC.,THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type

- ☒ Civil Action
- ☐ CPLR article 75 Arbitration
- ☐ Action Commenced under CPLR 214-g
- ☐ CPLR article 78 Proceeding
- ☐ Special Proceeding Other
- ☐ Habeas Corpus Proceeding

Filing Type

- ☒ Appeal
- ☐ Original Proceedings
  - ☐ CPLR Article 78
  - ☐ Eminent Domain
  - ☐ Labor Law 220 or 220-b
  - ☐ Public Officers Law § 36
  - ☐ Real Property Tax Law § 1278
- ☐ Transferred Proceeding
  - ☐ CPLR Article 78
  - ☐ Executive Law § 298
- ☐ CPLR 5704 Review

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

☐ Administrative Review	☒ Business Relationships	☒ Commercial	☐ Contracts
☐ Declaratory Judgment	☐ Domestic Relations	☐ Election Law	☐ Estate Matters
☐ Family Court	☐ Mortgage Foreclosure	☐ Miscellaneous	☐ Prisoner Discipline & Parole
☐ Real Property (other than foreclosure)	☒ Statutory	☐ Taxation	☐ Torts

Appeal

Paper Appealed From (Check one only):

If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

☐ Amended Decree	☐ Determination	■ Order	☐ Resettled Order
☐ Amended Judgement	☐ Finding	☐ Order & Judgment	☐ Ruling
☐ Amended Order	☐ Interlocutory Decree	☐ Partial Decree	☐ Other (specify):
■ Decision	☐ Interlocutory Judgment	☐ Resettled Decree	
☐ Decree	☐ Judgment	☐ Resettled Judgment	

Court: Supreme Court	County: New York
Dated: 09/26/2023	Entered: 09/27/2023
Judge (name in full): Hon. Arthur F. Engoron	Index No.: 452564/2022
Stage: ■ Interlocutory ☐ Final ☐ Post-Final	Trial: ☐ Yes ■ No If Yes: ☐ Jury ☐ Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? ■ Yes ☐ No

If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

2023-04925

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: ☐ Order to Show Cause ☐ Notice of Petition ☐ Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court	County: Choose County
Judge (name in full):	Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Armen Morian, Esq., appeals from the Decision and Order of Supreme Court, New York County (Hon. Arthur F. Engoron, J.S.C.), dated September 26, 2023 and entered by the Clerk of the Court on September 27, 2023, which granted Plaintiff's motions for sanctions.

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Whether Supreme Court committed errors of law and/or fact, abused its discretion, and/or acted in excess of its jurisdiction by, inter alia, granting Plaintiff's motion for sanctions against Armen Morian, Esq. in the amount of $7,500.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	PEOPLE OF THE STATE OF NEW YORK	Plaintiff	Respondent
2	DONALD J. TRUMP	Defendant	None
3	DONALD TRUMP, JR.	Defendant	None
4	ERIC TRUMP	Defendant	None
5	ALLEN WEISSELBERG	Defendant	None
6	JEFFREY MCCONNEY	Defendant	None
7	THE DONALD J. TRUMP REVOCABLE TRUST	Defendant	None
8	THE TRUMP ORGANIZATION, INC.	Defendant	None
9	THE TRUMP ORGANIZATION LLC	Defendant	None
10	DJT HOLDINGS LLC	Defendant	None
11	DJT HOLDINGS MANAGING MEMBER	Defendant	None
12	TRUMP ENDEAVOR 12 LLC	Defendant	None
13	401 NORTH WABASH VENTURE LLC	Defendant	None
14	TRUMP OLD POST OFFICE LLC	Defendant	None
15	40 WALL STREET LLC	Defendant	None
16	SEVEN SPRINGS LLC	Defendant	None
17	Armen Morian, Esq.	Petitioner	Appellant
18			
19			
20			

Attorney Information			
Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.			
Attorney/Firm Name: Kevin C. Wallace, Esq. and Colleen K. Faherty, Esq., Office of the New York State Attorney General			
Address: 28 Liberty Street			
City: New York	State: New York	Zip: 10005	Telephone No: 212-416-6046
E-mail Address: kevin.wallace@ag.ny.gov; colleen.faherty@ag.ny.gov			
Attorney Type: ☐ Retained ☐ Assigned ■ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 1			
Attorney/Firm Name: Alina Habba, Esq. and Michael Madaio, Esq., Habba Madaio & Associates, LLP			
Address: 112 West 34th Street, 17th &18th Floors			
City: New York	State: New York	Zip: 10020	Telephone No: 908-869-1188
E-mail Address: ahabba@habbalw.com; mmadaio@habbalaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 2, 5-16			
Attorney/Firm Name: Christopher M. Kise, Esq., Continental PLLC			
Address: 101 North Monroe Street, Suite 750			
City: Tallahassee	State: Florida	Zip: 32301	Telephone No: 305-677-2707
E-mail Address: ckise@continentalpllc.com			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ■ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 7, 10-16			
Attorney/Firm Name: Clifford S. Robert, Esq. and Michael Farina, Esq., Robert & Robert PLLC			
Address: 526 RXR Plaza			
City: Uniondale	State: New York	Zip: 11556	Telephone No: 516-832-7000
E-mail Address: crobert@robertlaw.com; mfarina@robertlaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 3-4			
Attorney/Firm Name: Armen Morian, Esq., Morian Law PLLC			
Address: One Grand Central Place, 60 East 42nd Street, Suite 4600			
City: New York	State: New York	Zip: 10165	Telephone No: 212-787-3300
E-mail Address: armenmorian@morianlaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 2, 7-17			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

-against-

DONALD J. TRUMP, *et al.*,

Defendants.

Index No. 452564/2022

NOTICE OF ENTRY

PLEASE TAKE NOTICE that annexed hereto is a true and correct copy of the Decision and Order of the Honorable Arthur F. Engoron, J.S.C. dated September 26, 2023, on Motion Sequence Numbers 027, 028, and 029 (NYSCEF Nos. 1531, 1532, 1533), filed and entered in the Office of the Clerk of the Supreme Court, New York County on the 27th day of September, 2023.

Dated: New York, New York
September 27, 2023

LETITIA JAMES
Attorney General of the State of New York

By: */s/ Colleen K Faherty*
Colleen K. Faherty
Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6046
colleen.faherty@ag.ny.gov

Attorney for the People of the State of New York

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON **PART** 37

Justice

----------X

INDEX NO. 452564/2022

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

MOTION DATES 08/30/2023, 08/30/2023, 09/05/2023

Plaintiff,

MOTION SEQ. NO. 026, 027, 028

- v -

DONALD J. TRUMP, DONALD TRUMP JR, ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

DECISION + ORDER ON MOTIONS

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 026) 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1292, 1293, 1294, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415,

1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1442, 1443, 1444, 1445, 1446, 1447

were read on this motion for PARTIAL SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 027) 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1474

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 028) 1263, 1264, 1265, 1276, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473

were read on this motion for SANCTIONS.

Upon the foregoing documents, it is hereby ordered that defendants' motion for summary judgment is denied, plaintiff's motion for partial summary judgment is granted in part, and plaintiff's motion for sanctions is granted in part, all as detailed herein.

This action arises out of a years-long investigation that plaintiff, the Office of the Attorney General of the State of New York ("OAG"), conducted into certain business practices that defendants engaged in from 2011 through 2021. OAG alleges that the individual and entity defendants committed repeated and persistent fraud by preparing, certifying, and submitting to lenders and insurers false and misleading financial statements, thus violating New York Executive Law § 63(12).

Procedural Background

In 2020, OAG commenced a special proceeding seeking to enforce a series of subpoenas against various named defendants and other persons and entities. This Court presided over that proceeding and issued several orders compelling compliance with OAG's subpoenas. See People v The Trump Org., Sup Ct, NY County, Index No. 541685/2020. During that proceeding, OAG and the Trump Organization entered into an agreement, which, broadly speaking, tolled the statute of limitations from November 5, 2020, through May 31, 2022. NYSCEF Doc. No. 1260.

On November 3, 2022, this Court found preliminarily that defendants had a propensity to engage in persistent fraud by submitting false and misleading Statements of Financial Condition ("SFCs") on behalf of defendant Donald J. Trump ("Donald Trump"). NYSCEF Doc. No. 183. Accordingly, the Court granted a preliminary injunction against any further fraud and appointed the Hon. Barbara S. Jones (ret.) as an independent monitor to oversee defendants' financial statements and significant asset transfers. NYSCEF Doc. Nos. 193 and 194.

Defendants moved to dismiss the complaint. In a Decision and Order dated January 6, 2023, this Court denied the motion. NYSCEF Doc. Nos. 453. Defendants appealed, resulting in a January 6, 2023 Order wherein the Appellate Division, First Department modified this Court's order to the extent of: (1) declaring that the "continuing wrong doctrine does not delay or extend [the statute of limitations]"; (2) finding that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and timely against defendants not subject to the tolling agreement if they accrued after February 6, 2016; and (3) dismissing the complaint as against defendant Ivanka Trump on statute of limitations grounds, finding that she was not an employee of the Trump Organization at the time at which the parties entered into the tolling agreement. People v Trump, 217 AD3d 609 (1st Dept 2023).

The Appellate Division declined to dismiss *any* other defendants or *any* causes of action.

Discovery ended on July 28, 2023, and OAG filed a note of issue shortly thereafter. NYSCEF Doc. No. 644. OAG now moves for partial summary judgment on its first cause of action, for fraud under Executive Law § 63(12). NYSCEF Doc. No. 765. Separately, plaintiff now moves, pursuant to 22 NYCRR 130-1.1, to sanction defendants for frivolous motion practice. NYSCEF Doc. No. 1263. Defendants also move for summary judgment, seeking to dismiss the complaint in its entirety. NYSCEF Doc. No. 834.

Executive Law § 63(12)

Executive Law § 63(12) provides, as here pertinent, as follows:

> Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of section four hundred forty of the former penal law or section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper. The word "fraud" or "fraudulent" as used herein shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions. The term "persistent fraud" or "illegality" as used herein shall include continuance or carrying on of any fraudulent or illegal act or conduct. The term "repeated" as used herein shall include repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON ALL CAUSES OF ACTION

Arguments Defendants Raise Again

Standing and Capacity to Sue

Defendants' arguments that OAG has neither capacity nor standing to sue under Executive Law § 63(12), and that the disclaimers of non-party accountants Mazars insulate defendants, invoke the time-loop in the film "Groundhog Day." This Court emphatically rejected these arguments in its preliminary injunction decision and in its dismissal decision, and the First Department affirmed both. Defendants' contention that a different procedural posture mandates a reconsideration, or *a fortiori*, a reversal, is pure sophistry[1].

As this Court and others have made abundantly clear, "[i]t is not disputed that the Attorney General is empowered to sue for violations of [Executive Law § 63(12)]." People v Greenberg, 21 NY3d 439, 446 (2013) (finding Executive Law § 63(12) to be broadly worded anti-fraud device); People v Ford Motor Co., 74 NY2d 495, 502 (1989) ("Executive Law § 63(12) is the procedural route by which the Attorney-General may apply to Supreme Court for an order enjoining repeated illegal or fraudulent acts").

Parens Patriae and Consumer Ambit

Defendants repeat the erroneous argument that the complaint must be dismissed because OAG cannot demonstrate the requirements of a *parens patriae* action, which is one in the public interest. "*Parens patriae* is a common-law standing doctrine that permits the state to commence an action to protect a public interest, like the safety, health or welfare of its citizens." People v Grasso, 11 NY3d 64, 72 at n 4 (2008). Invocation of such doctrine, or its requirements, is not necessary where, as here, the New York legislature has specifically empowered the Attorney General to bring such an action pursuant to Executive Law § 63(12). People v Credit Suisse Sec. (USA) LLC, 31 NY3d 622, 633 (2018) ("it is undisputed that Executive Law § 63(12) gives the Attorney General standing to redress liabilities recognized elsewhere in the law, expanding the scope of available remedies"); People v Trump Entrepreneur Initiative LLC, 137 AD3d 409, 417 (1st Dept 2016) ("[E]ven apart from prevailing authority, the language of the statute itself appears to authorize a cause of action; like similar statutes that authorize causes of action, § 63(12) defines the fraudulent conduct that it prohibits, authorizes the Attorney General to commence an action or proceeding to foreclose that conduct, and specifies the relief, including equitable relief, that the Attorney General may seek").

In any event, even if compliance with the requirements of the *parens patriae* doctrine is necessary, which it is not, OAG has easily satisfied those requirements, as it is well-settled that "[i]n varying contexts, courts have held that a state has a quasi-sovereign interest in protecting the integrity of the marketplace." Grasso at 69 n 4; People v Coventry First LLC, 52 AD3d 345, 346 (1st Dept 2008) ("the claim pursuant to Executive Law § 63(12) constituted proper exercises

[1] Indeed, the Court made this crystal clear in its January 6, 2023 order when it found: "Here, the issues of capacity and standing, are pure issues of law and do not depend on a trial of disputed issues of fact. Simply put, who the instant parties are and what the law says, which determine capacity and standing, are not disputed issues of fact that need to be tried." NYSCEF Doc. No. 453 at 4.

of the State's regulation of businesses within its borders in the interest of securing an honest marketplace"); People v Amazon.com, Inc., 550 F Supp 3d 122, 130-131 (SD NY 2021) ("[T]he State's statutory interest under § 63(12) encompasses the prevention of either 'fraudulent or illegal' business activities. Misconduct that is illegal for reasons other than fraud still implicates the government's interests in guaranteeing a marketplace that adheres to standards of fairness...").

Defendants' rehashed argument that OAG's complaint must be dismissed because it is not designed to protect consumers is unavailing. New York v Feldman, 210 F Supp 2d 294, 299-300 (SD NY 2002) ("[D]efendants' claim that section 63(12) is limited to consumer protection actions is simply incorrect. The New York Attorney General has repeatedly used section 63(12) to secure relief for persons who are not consumers in cases that are not consumer protection actions").

Defendants cite to the trial court decision People v Domino's Pizza, Inc., NY Slip Op 30015(U) (Sup Ct, NY County 2021), which is not binding on this Court, as authority for the proposition that any relief sought here should come in the form of private contract litigation, not "a law enforcement action under a statute designed to address public harm." NYSCEF Doc. No. 835 at 39. However, Domino's is wholly distinguishable from the instant case. There, the Court found that "OAG did not establish that Domino's representations to franchisees... were false, deceptive, or misleading. Accordingly, the Court concludes that OAG has not established that Domino's engaged in conduct that 'tends to deceive or creates an atmosphere conducive to fraud.'" Domino's at 26[2]. Here, as discussed *infra*, OAG demonstrates that defendants repeatedly submitted fraudulent financial documents to obtain financial benefits which otherwise they would not have received.

Defendants glaringly misrepresent the requirements of an Executive Law § 63(12) cause of action. Citing to People v Northern Leasing Sys., Inc., 70 Misc 3d 256, 267 (Sup Ct, NY County 2021), defendants assert that OAG must show "the practice is one likely to mislead a reasonable consumer acting reasonably under the circumstances." NYSCEF Doc. No. 835 at 42. However, the word "consumer" does not appear anywhere in the referenced decision, and defendants' characterization of its holding is inaccurate[3]. Northern Leasing confirms that the "test for fraud under Executive Law § 63(12) is whether an act tends to deceive or creates an environment conducive to fraud." Northern Leasing at 267 (further holding "Executive Law § 63(12) expands fraud to encompass new liability, while including non-statutory fraud claims" and finding that "[a] claim under Executive Law § 63(12) is the exercise of 'the State's regulation of businesses within its borders in the interest of securing an honest marketplace'").

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[2] As the failure to demonstrate false misrepresentations foreclosed the possibility of liability on that issue in Domino's, any commentary about the statute's requirements was pure *dicta*.

[3] Although "consumer" does appear in the First Department's affirmance of Northern Leasing, it does not advance defendants' proposition that Executive Law § 63(12) actions be consumer oriented; it simply reaffirms that "the test for fraud is whether the targeted act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." 193 AD3d 67 (1st Dept 2021). The fact that Northern Leasing challenged actions targeted at consumers does not mean that Executive Law § 63(12) is restricted to such actions.

Non-Party Disclaimers

Defendants, yet again, argue that OAG's complaint must be dismissed because the SFCs contain language, provided by non-party accountants Mazars, that indicate that they have not audited or reviewed the accompanying financial statements and therefore cannot express an opinion as to whether the financial statements comply with Generally Accepted Accounting Principles ("GAAP"). However, as this Court already ruled, these non-party disclaimers do not insulate defendants from liability, as they plainly state that "Donald J. Trump is responsible for the preparation and fair presentation of the financial statement in accordance with accounting principles generally accepted in the United States of America and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the financial statement." NYSCEF Doc. No. 183.

As this Court explained in its November 3, 2022 Decision and Order: "[t]he law is abundantly clear that" using a disclaimer as a defense to a justifiable reliance claim requires proof that: "(1) the disclaimer is made sufficiently specific to the particular type of fact misrepresented or undisclosed; and (2) the alleged misrepresentations or omissions did not concern facts peculiarly within the [defendant's] knowledge." Basis Yield Alpha Fund (Master) v Goldman Sachs Grp., Inc., 115 AD3d 128, 137 (1st Dept 2014) ("a [plaintiff] may not be precluded from claiming reliance on misrepresentation of facts peculiarly within the [defendant's] knowledge"); People v Bull Inv. Grp., Inc., 46 AD2d 25, 29 (3d Dept 1974) ("It has been stated that '[t]he rule is clear that where one party to a transaction has superior knowledge, or means of knowledge not open to both parties alike, he is under a legal obligation to speak and his silence constitutes fraud"). As the SFCs did not particularize the type of fact misrepresented or undisclosed and were unquestionably based on information peculiarly within defendants' knowledge, defendants may not rely on such purported disclaimers as a defense.

In sum, the Mazars disclaimers put the onus for accuracy squarely on defendants' shoulders.

Scienter and "Participation" Requirements

Defendants erroneously claim that Fletcher v Dakota, Inc, 99 AD3d 43, 49 (1st Dept 2012), stands for the proposition that the purported "participation element [of a cause of action under Executive Law § 63(12)] is satisfied where the defendant 'directed, controlled, or ratified the decision that led to plaintiff's injury.'" However, Fletcher is not an Executive Law § 63(12) action, it was brought as a corporate tort; accordingly, is not relevant here.[4] Executive Law § 63(12) is much more than a mere codification of common law fraud.

Defendants also incorrectly rely on Abrahami v UPC Const. Co., 224 AD2d 231, 233 (1st Dept 1996), for the proposition that "[m]erely providing copies of purportedly false financial statements is insufficient." NYSCEF Doc. No. 835 at 55. However, as Abrahami was not brought pursuant to Executive Law § 63(12), its analysis regarding "intent to deceive" is irrelevant. Unlike the situation in Abrahami, where an action is brought pursuant to Executive

[4] In fact, had defendants not cut off the beginning of the sentence they cited, it would be evident on its face that such case is legally irrelevant, as the full sentence reads: "A leading treatise on corporations states that a director may be held individually liable to third parties for a corporate tort if he either participated in the tort or else 'directed, controlled, approved or ratified the decision that led to the plaintiff's injury.'" Fletcher at 49.

Law § 63(12), "good faith or lack of fraudulent intent is not in issue." People v Interstate Tractor Trailer Training, Inc., 66 Misc 2d 678, 682 (Sup Ct, NY County 1971) (holding liability under Executive Law § 63(12) does not require demonstrating an "intent to defraud"); Trump Entrepreneur Initiative at 417 ("fraud under section 63(12) may be established without proof of scienter or reliance"); Bull Inv. Grp. at 27 ("[i]t is well-settled that the definition of fraud under subdivision 12 of section 63 of the Executive Law is extremely broad and proof of scienter is not necessary").

Disgorgement of Profits

In flagrant disregard of prior orders of this Court *and* the First Department, defendants repeat the untenable notion that "disgorgement is unavailable as a matter of law" in Executive Law § 63(12) actions. NYSCEF Doc. No. 835 at 70. This is patently false, as defendants are, or certainly should be, aware that the Appellate Division, First Department made it clear *in this very case* that "[w]e have already held that the failure to allege losses does not require dismissal of a claim for disgorgement under Executive Law § 63(12)." Trump, 217 AD3d at 610.

Defendants nonetheless rely on the trial court decision in People v Direct Revenue, LLC, 19 Misc 3d 1124(A) (Sup Ct, NY County 2008), for the proposition that Executive Law § 63(12) "do[es] no[t] authorize the general disgorgement of profits received from sources other than the public." NYSCEF Doc. No. 835 at 71-72. However, defendants' neglect to mention that Direct Revenue was superseded, and essentially overruled, in 2016 by the New York Court of Appeals in People v Greenberg, which unequivocally held that "disgorgement is an available remedy under the Martin Act and the Executive Law." People v Greenberg, 27 NY3d 490, 497 (2016).

Also fatally flawed is defendants' reliance on People v Frink Am., Inc., 2 AD3d 1379, 1380 (4th Dept 2003), as it relies on the outdated proposition that Executive Law § 63(12) "does not create any new causes of action" and thus, the remedy of disgorgement is unavailable. NYSCEF Doc. No. 835 at 73-74. However, in Trump Entrepreneur Initiative, in which at least three of the instant defendants were parties, the First Department unambiguously declared that "the Attorney General is, in fact, authorized to bring a cause of action for fraud under Executive Law § 63(12)." Trump Entrepreneur Initiative at 418; see also People v Pharmacia Corp., 27 Misc 3d 368, 373 (Sup Ct, NY County 2010) (holding "Executive Law § 63(12) applies to fraudulent conduct actionable at common law, as well as to conduct for which liability arises solely from the statute").

Defendants incorrectly posit that, under People v Ernst & Young, LLP, 114 AD3d 569 (1st Dept 2014), disgorgement is available under the Martin Act but not under Executive Law § 63(12). NYSCEF Doc. No. 836 at 73. This is simply untrue. In Ernst & Young, the First Department specifically held that disgorgement was an available and potentially "crucial" remedy in an Executive Law § 63(12) action. Ernst & Young at 570.

Defendants correctly assert that "the record is devoid of any evidence of default, breach, late payment, or any complaint of harm" and argue that as none of the recipients of the subject SFCs ever lodged a complaint with OAG or otherwise claimed damages, disgorgement of profits would be inappropriate. NYSCEF Doc. No. 835 at 40.

However, that is completely irrelevant. As the Ernst & Young Court noted:

> [W]here, as here, there is a claim based on fraudulent activity, disgorgement may be available as an equitable remedy, notwithstanding the absence of loss to individuals or independent claims for restitution. Disgorgement is distinct from the remedy of restitution because it focuses on the gain to the wrongdoer as opposed to the loss to the victim. Thus, disgorgement aims to deter wrongdoing by preventing the wrongdoer from retaining ill-gotten gains from fraudulent conduct. Accordingly, the remedy of disgorgement does not require a showing or allegation of direct losses to consumers or the public; the source of the ill-gotten gains is "immaterial."

Id. (disgorgement is not impermissible penalty "since the wrongdoer who is deprived of an illicit gain is ideally left in the position he would have been had there been no misconduct") (internal citations omitted); see also Amazon.com at 130 ("Executive Law § 63(12) authorizes the Attorney General to seek injunctive and other relief", and finding "the Attorney General can seek disgorgement of profits on the State's behalf").

Sanctionable Conduct for Frivolous Motion Practice

In response to both OAG's request for a preliminary injunction and to defendants' motions to dismiss, this Court rejected every one of the aforementioned arguments. In rejecting such arguments for the second time, this Court cautioned that "sophisticated counsel should have known better." [5] NYSCEF Doc. No. 453 at 5. However, the Court declined to impose sanctions, believing it had "made its point." Id.

Apparently, the point was not received.

One would not know from reading defendants' papers that this Court has already *twice* ruled against these arguments, called them frivolous, and *twice* been affirmed by the First Department.

"In its discretion, a court may award costs and financial sanctions against an attorney or party resulting from frivolous conduct." Kamen v Diaz-Kamen, 40 AD3d 937, 937 (2d Dept 2007). See Yan v Klein, 35 AD3d 729, 729–30 (2d Dept 2006) ("The plaintiff, following two prior actions, has 'continued to press the same patently meritless claims,' most of which are now barred by the doctrines of res judicata and collateral estoppel").

Defendants' conduct in reiterating these frivolous arguments is egregious. We are way beyond the point of "sophisticated counsel should have known better"; we are at the point of intentional and blatant disregard of controlling authority and law of the case. This Court emphatically rejected these arguments, as did the First Department. Defendants' repetition of them here is indefensible.

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5 The Court even went so far as to caution that the "arguments were borderline frivolous even the first time defendants made them." NYSCEF Doc. No. 453 at 3.

Pursuant to New York Administrative Code § 130-1.1, "[t]he Court, as appropriate, may make such an award of costs or impose such financial sanctions against either an attorney or a party to the litigation or against both." The provision further states that:

> For purposes of this Part, conduct is frivolous if:
>
> (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
>
> (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
>
> (3) it asserts material factual statements that are false.

22 NYCRR 130-1.1(c). Defendants' inscrutable persistence in re-presenting these arguments clearly satisfies the first of these three possible criteria.

When considering imposing sanctions "[a]mong the factors [the court] is directed to consider is whether the conduct was continued when it became apparent, or should have become apparent, that the conduct was frivolous, or when such was brought to the attention of the parties or to counsel." Levy v Carol Mgmt. Corp., 260 AD2d 27, 34 (1st Dept 1999) (further finding that sanctions both "punish past conduct" and "they are goal oriented, in that they are useful in deterring future frivolous conduct").

In its January 6, 2023 Decision and Order, this Court warned defendants that their "reiteration of [these previously rejected arguments] scattered across five different motions to dismis[s] was frivolous." NYSCEF Doc. No. 453 at 3.

In a last-ditch attempt to stave off sanctions, defendants have submitted an affirmation by the Hon. Leonard B. Austin (ret.), who had a supremely distinguished judicial career, culminating in 12 years on the Appellate Division, Second Department. NYSCEF Doc. No. 1449. Justice Austin presents what is essentially a primer on the interplay between motions to dismiss and motions for summary judgment, and every point of law is valid.

However, it is wholly invalid as a reason for this Court to deny sanctions. First, legal arguments are for counsel to make, not for experts to submit. "The rule prohibiting experts from providing their legal opinions or conclusions is 'so well-established that it is often deemed a basic premise or assumption of evidence law—a kind of axiomatic principle.'" In re Initial Pub. Offering Sec. Litig., 174 F Supp 2d 61, 64 (SD NY 2001) (citing Thomas Baker, The Impropriety of Expert Witness Testimony on the Law, 40 U Kan LRev 325, 352 (1992) (precluding "expert affidavits" on the law); accord, Note, Expert Legal Testimony, 97 Harv LRev 797, 797 (1984) ("it remains black-letter law that expert legal testimony is not permissible"). Neither defendants nor Justice Austin has sought permission to file an amicus brief. In their own submissions, defendants have expounded on the law of capacity, standing, disclaimers, motions to dismiss, motions for summary judgment, and sanctions. The heft and prestige of a legal lion adds nothing.

More importantly, the subject affirmation utterly fails to fit the specific facts of this case into the general principles it enunciates. In many situations, discovery, and a complete record, and the reversal of the burden of proof, will turn the tide, requiring that a valid complaint be dismissed because there is no evidence to support it. But standing and capacity are legal questions, not factual issues. Crucially, while defendants have, by their own account, conducted extensive discovery and have created a complete record, they fail to point to a single fact that discovery has uncovered, let alone a single fact in the record, that changes the calculus of their denied and doomed capacity and standing arguments.

Capacity and standing are not esoteric concepts. Infants, legally declared incompetents, and persons under certain legal disabilities are not allowed to sue. The New York Attorney General is none of the above. If my sibling or neighbor is harmed, I do not have standing to sue for his or her injury. Citizens may not sue to prevent governmental actions unless they may suffer some personal harm. Executive Law § 63(12) was promulgated to give the Attorney General standing to sue on behalf of the people of New York to prevent or deter the precise type of fraud here at issue. Arguments to the contrary are risible.

Defendants' arguments that the factual record developed in discovery changed the landscape under which standing should be viewed is legally preposterous. The best that defendants could muster at oral argument was to contend (incorrectly) that plaintiff cannot sue because the subject transactions were between private entities, and nobody lost money. However, that is purely an argument on the merits, not an argument on standing. Taken to its logical extreme, absolutely any time a defendant denies liability, it could move to dismiss on the ground of lack of standing.

Exacerbating defendants' obstreperous conduct is their continued reliance on bogus arguments, in papers and oral argument. In defendants' world: rent regulated apartments are worth the same as unregulated apartments; restricted land is worth the same as unrestricted land; restrictions can evaporate into thin air; a disclaimer by one party casting responsibility on another party exonerates the other party's lies; the Attorney General of the State of New York does not have capacity to sue or standing to sue (never mind all those cases where the Attorney General has sued successfully) under a statute expressly designed to provide that right; all illegal acts are untimely if they stem from one untimely act; and square footage subjective.

That is a fantasy world, not the real world.

There is also a larger context to the sanctions issue. Several defendants are no strangers to sanctions and why courts are sometimes constrained to issue them. In the investigatory special proceeding this Court found Donald Trump in contempt of Court and sanctioned him $10,000 per day for failing to comply with his discovery obligations. This Court lifted the contempt after 11 days. The First Department affirmed the contempt and the fines. People v Trump, 213 AD3d 503, 504 (1st Dept 2023) ("[T]he financial sanction to compel compliance was a proper exercise of the court's discretionary power and was not excessive or otherwise improper, under the particular circumstances").

In Donald J. Trump v Hillary R. Clinton, 22-14102-CV-DMM, ("Order on Motion for Indicative Ruling") (filed September 15, 2023) (SD FL), Judge Donald M. Middlebrooks denied what in

New York legal parlance would be called "a motion to reargue," pursuant to which Donald Trump asked Judge Middlebrooks to vacate sanctions imposed on him and his legal team totaling close to one million dollars. Judge Middlebrooks wrote, on the first page thereof, that "Movants acted in bad faith in bringing this lawsuit and that this case exemplifies Mr. Trump's history of abusing the judicial process.[6]" Id.

Unfortunately, sanctions are the only way to impress upon defendants' attorneys the consequences of engaging in repetitive, frivolous motion practice after this Court, affirmed by the Appellate Division, expressly warned them against doing so. Boye v Rubin & Bailin, LLP, 152 AD3d 1, 11 (1st Dept 2017) ("sanctions serve to deter future frivolous conduct" and their "goals include preventing the waste of judicial resources, and deterring vexatious litigation and dilatory or malicious litigation tactics").

It is of no consequence whether the arguments were made at the direction of the clients or *sua sponte* by the attorneys; counsel are "ethically obligated to withdraw any baseless and false claims, if not upon [their] own review of the record, certainly by the time [the] Supreme Court advised [them] of this fact." Boye at 11 (upholding sanctions against attorneys because "counsel continued to... pursue claims which were completely without merit in law or fact."); see also Nachbaur v Am. Transit Ins. Co., 300 AD2d 74, 75 (1st Dept 2002) (motion court properly sanctioned attorneys for "repetitive and meritless motions"); Leventritt v Eckstein, 206 AD2d 313, 314 (1st Dept 1994) (affirming sanctions imposed on attorney for "repeated pattern of frivolous conduct"); William Stockler & Co. v Heller, 189 AD2d 601, 603 (1st Dept 1993) (affirming sanctions against attorney upon finding "there was no factual or legal basis for defendant's original cross motion, or for the reargument motion, that both motions were 'totally frivolous' and were submitted 'just really to delay'"). Counsel should be the first line of defense against frivolous litigation.

Accordingly, this Court grants OAG's motion for sanctions, in part, to the extent of sanctioning each of defendants' attorneys who signed their names to the instant legal briefs[7], in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Order.

Arguments Defendants Raise for the First Time

Summary Judgment Standard

To prevail on its motion for summary judgment on all causes of action, defendants must first "make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient

[6] One factor Judge Middlebrooks considered was Donald Trump's "disregard for legal principles and precedent." Id. at 14. In short, Donald Trump, and his lawyers, are not sanctions neophytes. This is not their first rodeo.

[7] The following attorneys signed their names to defendants' instant briefs and are, accordingly, sanctioned $7,500 each: Michael Madaio, Esq. (Habba Madaio & Associates, LLP); Clifford S. Robert, Esq. (Robert & Robert PLLC); Michael Farina Esq. (Robert & Robert PLLC); Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC); and Armen Morian (Morian Law PLLC).

evidence to eliminate any material issues of fact from the case." Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 (1985). "Failure [of the movant] to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers." Id. If the defendants make out their prima facie showing, the burden then shifts to plaintiff to offer evidence sufficient to rebut that showing by identifying disputed issues of fact that should go before a trier of fact.

Defendants strenuously argue throughout their briefs that OAG has not met her burden sufficient to defeat defendants' motion for summary judgment. However, defendants misstate the black letter law applicable to summary judgment, citing to City Dental Servs., P.C. v New York Cent. Mut., 34 Misc 3d 127(A) (App Term 2d, 11th, 13th Jud Dists 2011) for the flatly wrong proposition that "in order to defeat summary judgment on these claims of predicate illegality, the NYAG must, with respect to each predicate illegality attached, 'establish[] each element of its cause with respect to those causes of action.'" NYSCEF Doc. No. 835 at 62.

Not only does City Dental not stand for that proposition (it merely found that under the circumstances of that case, plaintiff's evidence failed to meet her burden on summary judgment), but the law is well-settled that "to defeat a motion for summary judgment the opposing party must 'show facts sufficient to require a trial of any issue of fact," not make out its own case. Zuckerman v City of New York, 49 NY2d 557, 562 (1980). While OAG must establish each and every element of its cause(s) of action in order to *prevail* on its own motion for summary judgment, in order to defeat defendants' motion for summary judgment (provided defendants are able to demonstrate a prima facie case) "an opposing party must 'show facts sufficient to require a trial of any issue of fact.'" Guzman v Strab Const. Corp., 228 AD2d 645, 646 (2d Dept 1996) ("evidentiary facts derived from the documents submitted [in opposition to summary judgment motion] are sufficient to present a triable issue of fact").

The "Worthless Clause"

Defendants rely on what they call a "worthless clause" set forth in the SFCs under the section entitled "Basis of Presentation" that reads, as here pertinent, as follows:

> Assets are stated at their estimated current values and liabilities at their estimated current amounts using various valuation methods. Such valuation methods include, but are not limited to, the use of appraisals, capitalization of anticipated earnings, recent sales and offers, and estimates of current values as determined by Mr. Trump in conjunction with his associates and, in some instances, outside professionals. Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates presented herein are not necessarily indicative of the amount that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts.

NYSCEF Doc. Nos. 769 at 7; 770 at 7; 771 at 7; 772 at 7; 773 at 7.

In his sworn deposition, Donald Trump spent a lot of time invoking this clause: "Well, they call it a 'disclaimer.' They call it 'worthless clause' too, because it makes the statement 'worthless.'" NYSCEF Doc. No. 859 at 67. Donald Trump goes on to say that "I have a clause in there that says, don't believe the statement, go out and do your own work. This statement is 'worthless.' It means nothing." Id. at 68. Furthermore, Donald Trump implies that he did not consider it important to review the SFCs for accuracy because of the existence of this purported "worthless clause":

> OAG: Does this refresh your recollection of the process whereby you would get final review of the Statement of Financial Condition?
>
> DJT: Yeah, I think generally. It's interesting. I would say as years went by, I got less and less and then once I became President, I would – if I saw it at all, I'd see it, you know, after it was already done.
>
> OAG: So in the period –
>
> DJT: Again, you know, I hate to be boring and tell you this. When you have the worthless clause on a piece of paper and the first – literally the first page you're reading about how this is a worthless statement from the standpoint of your using it as a bank or whatever –whoever may be using it, you tend not to get overly excited about it. I think it had very little impact, if any impact on the banks.
>
> ....
>
> OAG: So am I understanding that you didn't particularly care about what was in the Statement of Financial Condition?
>
> DJT: I didn't get involved in it very much. I felt it was a meaningless document, other than it was almost a list of my properties, with good faith effort of people trying to put some value down. It was a good faith effort.

Id. at 107-108. Defendants further submit the affidavit and deposition transcript of Robert Unell, who purports to be an expert in commercial real estate, for the proposition that because of "the worthless clause" in the SFC, "no lender relies on these for what it is." NYSCEF Doc. Nos. 1030 at 183-184; 1031.

However, defendants' reliance on these "worthless" disclaimers is worthless. The clause does not use the words "worthless" or "useless" or "ignore" or "disregard" or any similar words. It does not say, "the values herein are what I think the properties will be worth in ten or more years." Indeed, the quoted language uses the word "current" no less than five times, and the word "future" zero times.

Additionally, as discussed *supra*, a defendant may not rely on a disclaimer for misrepresentation of facts peculiarly within the defendant's knowledge. Basis Yield Alpha Fund at 136. Here, as the valuations of the subject properties are, obviously, peculiarly within defendants' knowledge, their reliance on them is to no avail.

Furthermore, "[t]his 'special facts doctrine' applies *regardless of the level of sophistication of the parties*." TIAA Glob. Invs. LLC v One Astoria Square LLC, 127 AD3d 75, 87 (1st Dept 2015) (emphasis added) (holding disclaimer does not bar liability for fraud where facts were peculiarly within disclaiming party's knowledge).

Thus, the "worthless clause" does not say what defendants say it says, does not rise to the level of an enforceable disclaimer, and cannot be used to insulate fraud as to facts peculiarly within defendants' knowledge, even vis-à-vis sophisticated recipients.

The Tolling Agreement

The First Department has declared that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and claims against defendants not subject to the tolling agreement are timely if they accrued after February 6, 2016. Trump, 217 AD3d at 611. Defendants concede that the tolling agreement binds each of the LLC-defendants and the Trump Organization. However, they argue that each of the individual defendants and the Donald J. Trump Revocable Trust (the "DJT Revocable Trust") are not bound by the agreement.

Alan Garten, the Trump Organization's Chief Legal Officer, originally entered into the tolling agreement on behalf of "the Trump Organization" on August 27, 2021; the agreement was extended one time by an amendment dated May 3, 2022. NYSCEF Doc. No. 1260. It tolls the statute of limitations for the period from November 5, 2020, through May 31, 2022. Id. at 2. The agreement contains a footnote to the entity "the Trump Organization" that reads as follows:

> As noted in the December 7, 2019 subpoena issued in this investigation to the Trump Organization, the "Trump Organization" as used herein includes The Trump Organization, Inc; DJT Holdings LLC; DJT Holdings Managing Member LLC; and any predecessors, successors, present or former parents, subsidiaries, and affiliates, whether direct or indirect; and all directors, officers, partners, employees, agents, contractors, consultants, representatives, and attorneys of the foregoing, and any other Persons associated with or acting on behalf of the foregoing, or acting on behalf of any predecessors, successors, or affiliates of the foregoing.

Id. at 4 n 1.

Thus, the tolling agreement at issue here binds "all directors [and] officers" and "present or former parents" of the Trump Organization and its affiliates and subsidiaries. Id. It is undisputed that at the time the tolling agreement was executed, each individual defendant, Donald J. Trump, Donald Trump Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney,

were all directors and/or officers of the Trump Organization. NYSCEF Doc. No. 1293 at ¶¶ 673, 680, 696, 710, 736.

Defendants argue that the non-signatory defendants are not bound by the agreement, citing Highland Crusader Offshore Partners, L.P. v Targeted Delivery Techs. Holdings, Ltd., 184 AD3d 116, 121 (1st Dept 2020), for the "general principal that only the parties to a contract are bound by its terms." NYSCEF Doc. No. 835 at 27. However, defendants fail to quote the following sentence, which provides that "[a] non-signatory may be bound by a contract under certain limited circumstances." Highland at 122. See also Oberon Sec., LLC v Titanic Ent. Holdings LLC, 198 AD3d 602, 603 (1st Dept 2021) (non-signatory companies bound by agreement with language defining signatory to include "all subsidiaries, affiliates, [and] successors").

In People v JUUL Labs, Inc., 212 AD3d 414, 417 (1st Dept 2023), in a case involving nearly identical language in a corporate tolling agreement[8], the First Department recently held that non-signatory corporate affiliates, officers, and directors were bound by the agreement. Similarly, here all the individual defendants are bound by the instant tolling agreement's terms and may be held liable for any claims that accrued after July 13, 2014.

Defendants argue that OAG is judicially estopped from asserting that the agreement binds the individual defendants based on statements OAG's counsel made during oral argument in the investigatory special proceeding. NYSCEF Doc. No. 1292 at 26. Specifically, on April 25, 2022, while seeking to hold Donald Trump in contempt for failing to comply with court orders, OAG's counsel stated: "[t]here is hard prejudice because Donald Trump is not a party to the tolling agreement, that tolling agreement only applies to the Trump Organization." NYSCEF Doc. No. 1041 at 59.

For judicial estoppel to be applicable: "First, the party against whom the estoppel is asserted must have argued an inconsistent position in a prior proceeding; and second, the prior inconsistent position must have been adopted by the court in some manner." Bates v Long Island R. Co., 997 F2d 1028, 1038 (2d Cir 1993).

Defendants are correct that the first prong is satisfied, in that the statements OAG's counsel made during oral argument are inconsistent with the position OAG is now taking. However, defendants cannot demonstrate that this Court adopted the prior position. Indeed, this Court did not need to, and did not, consider the tolling agreement when it issued its April 26, 2022 Decision and Order finding Donald Trump in contempt. See Ghatani v AGH Realty, LLC, 181 AD3d 909, 911 (2d Dept 2020) ("For the doctrine [of judicial estoppel] to apply, there must be a final determination endorsing the party's inconsistent position in the prior proceeding").

This Court has not addressed the tolling agreement until now. Accordingly, defendants cannot demonstrate that this Court adopted OAG's prior inconsistent position.

[8] The substantially similar tolling agreement at issue in Juul can be found under Index No. 452168/2019, NYSCEF Doc. No. 176.

Moreover, "[t]he party asserting estoppel must show with respect to himself: '(1) lack of knowledge of the true facts; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change in his position.'" BWA Corp. v Alltrans Exp. U.S.A., Inc., 112 AD2d 850, 853 (1st Dept 1985). Here, none of the defendants claim that they changed their positions or courses of conduct in reliance upon the statement of OAG's counsel during oral argument.

Finally, while judicial estoppel may be applied to prohibit inconsistent changes in factual positions, courts have declined to extend the doctrine to changes in legal positions. Seneca Nation of Indians v New York, 26 F Supp 2d 555, 565 (WD NY 1998), affd, 178 F3d 95 (2d Cir 1999) (finding "[t]here is no legal authority" for "broadening of the doctrine" to "include seemingly inconsistent legal positions"). Who physically signed the agreement is a question of fact; whom it binds is a question of law.

Defendants' argument that the DJT Revocable Trust is not bound by the tolling agreement falls flat. In his deposition, Donald Trump affirmed under oath that the assets of the Trump Organization are held in the DJT Revocable Trust, for which he is the sole donor and beneficiary. NYSCEF Doc. No. 859 at 21. Donald Trump also affirmed that at the time the trust was formed, he was the sole trustee and remained the sole trustee until 2017, when defendants Allen Weisselberg and Donald Trump, Jr. became the sole trustees. Id. at 20-24.

As every beneficiary, donor, and trustee of the DJT Revocable Trust is a defendant bound by the tolling agreement, and as the trust is unquestionably a "parent" of the Trump Organization, so too does the tolling agreement bind the DJT Revocable Trust. See People v Leasing Expenses Co. LLC, 199 AD3d 521, 522 (1st Dept 2021) ("It may likewise be inferred that the trustees had knowledge of the activities of the businesses they controlled through the trust mechanism. Hence, under Executive Law § 63(12), the family trusts and trustees may likewise be held liable for the fraud"); see e.g., Kurzman v Graham, 12 Misc 3d 586, 590 (Sup Ct, NY County 2006) ("courts will not allow the owner of assets to evade creditors by placing the property in a trust while retaining a right to revoke the trust").

Defendants cite to New York Estates, Powers and Trust Law § 11-1.1(b)(17) for the proposition that only a trustee may bind a trust to an agreement. However, § 11-1.1(b)(17) does not state this; rather, it states:

> (b) In the absence of contrary or limiting provisions in the court order or decree appointing a fiduciary, or in a subsequent order or decree, or in the will, deed or other instrument, every fiduciary is authorized:
>
> ...
>
> (17) To execute and deliver agreements, assignments, bills of sale, contracts, deeds, notes, receipts and any other instrument necessary or appropriate for the administration of the estate or trust.

This provision simply says what a fiduciary is permitted to do in the absence of a contrary provision. It does nothing to advance defendants' argument that *only* a trustee may bind a trust,

particularly since defendants fail to cite to any provision of the DJT Revocable Trust restricting who can bind it, as § 11-1.1(b)(17) anticipates.

Moreover, Korn v Korn, 206 AD3d 529, 530 (1st Dept 2022), upon which defendants inexplicably rely, is irrelevant to the instant analysis, as that case involved an examination by the court as to whether a fiduciary had a right or duty to negotiate on behalf of an estate pursuant to § 11-1.1(b)(13), not pursuant to § 11-1.1(b)(17), to which defendants cite.

Finally, "the Attorney General should not be limited, in [her] duty to protect the public interest, by an... agreement [s]he did not join." People v Coventry First LLC, 13 NY3d 108, 114 (2009) (holding Attorney General not bound by arbitration agreement when pursuing Executive Law § 63(12) claim and finding "[s]uch an arrangement between private parties cannot alter the Attorney General's statutory role or the remedies that [s]he is empowered to seek").

The tolling agreement was a mutually beneficial and common arrangement pursuant to which OAG agreed to hold off suing, and Alan Garten, on behalf of the Trump Organization, agreed to toll the statute of limitations. All defendants received the benefit of the bargain; OAG held off suing. OAG is entitled to its benefit of the bargain, the tolling of the statute of limitations, for the limited agreed-upon time, as against anyone it could have sued for the matters at issue at the time at which the agreement was executed. OAG clearly did not intend to permit defendants' principals to evade the tolling agreement based on a technicality contrary to the spirit of the agreement and controlling caselaw.

Statute of Limitations

As a general rule, statutes of limitation start running when a claim accrues, that is, when it can be sued upon. In arguing that OAG's causes of action are untimely, defendants incorrectly assert that the statute of limitations starts running on the date the parties entered into the subject agreements, or when the loans closed. However, the First Department did not use the word "closed," it used the word "completed." Trump, 217 AD3d at 611. Obviously, the transactions were not "completed" while the defendants were still obligated to, and did, annually submit current SFCs to comply with the terms of the loan agreements.

Defendants further assert that any continuing documentation provided after the agreements were entered into, or when the loans closed, is of no consequence if the proceeds were distributed prior to July 2014. NYSCEF Doc. No. 835 at 18. This argument is unavailing. As OAG asserts, each submission of an SFC after July 13, 2014, constituted a separate fraudulent act. Indeed, each submission of a financial document to a third-party lender or insurer would "requir[e] a separate exercise of judgment and authority," triggering a new claim. Yin Shin Leung Charitable Found. v Seng, 177 AD3d 463, 464 (1st Dept 2019) (finding continuous series of wrongs each of which gave rise to its own claim).

Defendants mistakenly assert that if a loan agreement was entered into and its proceeds were dispersed prior to the applicable statute of limitations, then a claim arising out of submitting any subsequent contractually required financial documentation is also untimely, irrespective of when that documentation is submitted. Defendants would have this Court apply a bizarre, invented, inverted form of the "relation back" doctrine, pursuant to which if one aspect of fraudulent

business conduct falls outside the statute of limitations, then all subsequent aspects of fraudulent conduct also fall outside the statute, no matter how inextricably intertwined.

Of course, this is contrary to controlling case law, which holds that a cause of action accrues at the time "when one misrepresents a material fact." Graubard Mollen Dannett & Horowitz v Moskovitz, 86 NY2d 112, 12 (1995). Moreover, even the plain language of Executive Law § 63(12) states: "[t]he term 'repeated' as used herein shall include repetition of any *separate and distinct fraudulent or illegal act*" (emphasis added). Clearly, the submission of each separate fraudulent SFC is a distinct fraudulent act.

OAG is not challenging the loans, the closings, or the disbursements; it is challenging defendants' submissions of financial documents containing false and misleading information. Thus, any SFC that was submitted after July 13, 2014, falls within the applicable statute of limitations. CW Capital Cobalt VR Ltd. v CW Capital Invs., LLC, 195 AD3d 12, 19-20 (1st Dept 2021) (each instance of wrongful conduct a "separate, actionable wrong" giving "rise to a new claim").

Materiality

It is settled that a standalone cause of action under Executive Law § 63(12) does not require a demonstration of materiality but merely that an "act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." People v Gen. Elec. Co., 302 AD2d 314, 314-315 (1st Dept 2003) (holding that, unlike GBL § 349, plaintiff need not prove "the challenged act or practice 'was misleading in a material way'").

Although the Domino's court found that "evidence regarding falsity, materiality, reliance and causation plainly is *relevant* to determining whether the Attorney General has established that the challenged conduct has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud" (Domino's at 11), every Appellate Division and the New York Court of Appeals now hold that materiality and scienter are not requirements for liability under § 63(12).

However, as discussed *infra*, although materiality is required under the second through seventh causes of action, it is not required under a standalone cause of action under Executive Law § 63(12), the OAG's first cause of action.

Defendants argue that the SFCs were not materially misleading, claiming, *inter alia* that: (1) "[t]here is no such thing as objective value"; (2) "a substantial difference between valuation in the SOFCs and appraisal, per se, is not evidence of inflated values"; (3) there is nothing improper about using "fixed assets" valuations as opposed to using the current market valuation approach; and (4) it was proper to include "internally developed intangibles, such as the brand premium used in the valuation of President Trump's golf clubs, in personal financial statements." NYSCEF Doc No. 1292 at 20-23.

Thus, defendants essentially argue that value is inherently subjective; that because internal brand valuations are in the eye of the beholder (here, Donald Trump), they cannot be overvalued. Defendants argue that "[n]o bank or underwriter would have reasonably been materially misled by the alleged misstatements or omissions in the SOFCs and other information the Defendants

made available to their counterparties because no sophisticated counterparty would have considered the SOFCs and other information provided by the Defendants alone as material to extend credit or set an interest rate, or issue an insurance policy or price a risk, without doing their own due diligence." NYSCEF Doc. No. 835 at 45.

Defendants also argue: "[i]t follows that if the user [of the SFCs] is in possession of the correct information, then the financial statements are not materially misstated." Id. at 39. Defendants' stance is, practically speaking, that they may submit false SFCs so long as the recipients know, from their own due diligence, that the information is false.

Accepting defendants' premise would require ignoring decades of controlling authority holding that financial statements and real property valuations are to be judged objectively, not subjectively. FMC Corp. v Unmack, 92 NY2d 179, 191 (1998) ("*objectively* reasonable conclusion, drawn by a competent and experience appraiser, was based on credible evidence" that demonstrated "property was overvalued") (emphasis added); Assured Guar. Mun. Corp. v DLJ Mortg. Cap. Inc., 44 Misc 3d 1206(A) (Sup Ct, NY County 2014) ("Credit Suisse is reading this as a subjective standard, dependent on Assured's expectations. Credit Suisse is wrong. It is well settled that this is an objective standard").

Moreover, courts have long found that "generally, it is the 'market value' which provides the most reliable valuation for assessment purposes." Great Atl. & Pac. Tea Co. v Kiernan, 42 NY2d 236, 239 (1977); Consol. Edison Co. of New York v City of New York, 33 AD3d 915, 916 (2d Dept 2007) ("the standard for assessment remains market value"), affd 8 NY3d 591. Beauty may be in the eye of the beholder, but value is in the eye of the marketplace.

Further, defendants' assertion that the discrepancies between their valuations and the OAG's are immaterial is nonsense. What OAG has established, in many cases by clear, indisputable documentary evidence (as discussed *infra*), is not a matter of rounding errors or reasonable experts disagreeing. OAG has submitted conclusive evidence that between 2014 and 2021, defendants overvalued the assets reported in the SFCs between 17.27-38.51%; this amounts to a discrepancy of between $812 million and $2.2 billion dollars. NYSCEF Doc. No. 766 at 70. Even in the world of high finance, this Court cannot endorse a proposition that finds a misstatement of at least $812 million dollars to be "immaterial." Defendants have failed to identify any authority for the notion that discrepancies of the magnitude demonstrated here could be considered immaterial.

The Second through Seventh Causes of Action

The Second, Third, Fourth, Fifth, Sixth, and Seventh causes of action allege violations of Executive Law § 63(12) based on underlying violations of the New York Penal Law prohibiting falsification of business records, issuance of false financial statements, and insurance fraud.

Liability under New York Penal Law § 175.05 (falsifying business records in the second degree) requires that a person "[m]akes or causes a false entry in the business records of an enterprise."

Liability under New York Penal Law § 175.45 (issuing a false financial statement) requires that a person "represents in writing that a written instrument purporting to describe a person's financial

condition or ability to pay as of a prior date is accurate with respect to such person's current financial condition or ability to pay, whereas [that person] knows it is materially inaccurate in that respect."

Liability under New York Penal Law § 176.05 (insurance fraud) requires that a person submitted an application for insurance either: (1) knowing that it "contain[ed] materially false information concerning any fact material thereto"; or (2) "conceal[ed], for the purpose of misleading, information concerning any fact material thereto."

Accordingly, unlike a standalone cause of action under Executive Law § 63(12). the second through seventh causes of action require demonstrating some component of intent and materiality. People v Alamo Rent A Car, Inc., 174 Misc 2d 501, 505 (Sup Ct, NY County 1997) ("As in all other situations requiring *mens rea*, however, petitioners may prove, by reference to facts and circumstances surrounding the case, that respondents knew that their conduct was unlawful. Moreover, petitioners need not prove respondents acted with an 'evil motive, bad purpose or corrupt design'") (internal citations omitted).

OAG has demonstrated that there remain, at the very least, disputed issues of fact as to whether defendants violated these statutes, intentionally and materially. Thus, there are issues of fact as to causes of action two through seven that require a trial.

The Court has considered defendants' remaining arguments and finds them to be unavailing and/or non-dispositive.

Accordingly, defendants' motion for summary judgment dismissing every cause of action is denied in its entirety.

OAG'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ITS FIRST CAUSE OF ACTION

Summary Judgment Burden on Standalone Executive Law § 63(12) Cause of Action

OAG moves for partial summary judgment, seeking to hold defendants liable under OAG's first cause of action, for fraud under Executive Law § 63(12).

As this Court has noted *ad nauseum*, Executive Law § 63(12) "authorizes the Attorney General to bring a special proceeding against any person or business that engages in repeated or persistent fraudulent or illegal conduct, while broadly construing the definition of fraud so as to include acts characterized as dishonest or misleading and eliminating the necessity for proof of an intent to defraud." People v Apple Health & Sports Club, Ltd., Inc., 206 AD2d 266-267 (1st Dept 1994).

As OAG's first cause of action, the only one upon which it moves for summary judgment, alleges a standalone violation of Executive Law § 63(12), OAG need only prove: (1) the SFCs were false and misleading; and (2) the defendants repeatedly or persistently used the SFCs to transact business.

This instant action is essentially a "documents case." As detailed *infra,* the documents here clearly contain fraudulent valuations that defendants used in business, satisfying OAG's burden to establish liability as a matter of law against defendants. Defendants' respond that: the documents do not say what they say; that there is no such thing as "objective" value; and that, essentially, the Court should not believe its own eyes.[9]

The defenses Donald Trump attempts to articulate in his sworn deposition are wholly without basis in law or fact. He claims that if the values of the property have gone up in the years since the SFCs were submitted, then the numbers were not inflated at that time (i.e.; "But you take the 2014 statement, if something is much more valuable now – or, I guess, we'll have to pick a date which was a little short of now. But if something is much more valuable now, then the number that I have down here is a low number"). NYSCEF Doc. No. 1363 at 69-75). He also seems to imply that the numbers cannot be inflated because he could find a "buyer from Saudi Arabia" to pay any price he suggests.[10] Id. at 30-33, 60-62, 79-80.

The Trump Tower Triplex

This Court takes judicial notice that the Trump Tower apartment in which Donald Trump resided for decades (the "Triplex") is 10,996 square feet. NYSCEF Doc. No. 816 at 2. Between 2012-2016, Donald Trump submitted SFCs falsely claiming that the Triplex was 30,000 square feet, resulting in an overvaluation of between $114-207 million dollars. NYSCEF Doc. Nos. 782 at Rows 833-834, 1028, 783 at Rows 799-800, 1199, 784 at Rows 843-844, 785 at Rows 882-883, 789 at Row 913, 817. The misrepresentation continued even after defendants received written notification from *Forbes* that Donald Trump had been overestimating the square footage of the Triplex by a factor of three.[11]

In opposition, defendants absurdly suggest that "the calculation of square footage is a subjective process that could lead to differing results or opinions based on the method employed to conduct the calculation.[12]" NYSCEF Doc. No. 1293 at 20. Well yes, perhaps, if the area is rounded or oddly shaped, it is possible measurements of square footage could come to slightly differing results due to user error. Good-faith measurements could vary by as much as 10-20%, not 200%.

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[9] As Chico Marx, playing Chicolini, says to Margaret Dumont, playing Mrs. Gloria Teasdale, in "Duck Soup," "well, who ya gonna believe, me or your own eyes?"

[10] This statement may suggest influence buying more than savvy investing.

[11] Three days after receiving a written inquiry from *Forbes*, Trump Organization Vice President, Amanda Miller, sent an email to Trump Organization Executive Vice President and Chief Legal Officer, Alan Garten, indicating that she "spoke to Allen W[eisselberg] re: [Trump World Tower and Trump Tower] – we are going to leave those alone." NYSCEF Doc. No. 821. Although OAG need not show intent to deceive under a standalone § 63(12) cause of action, this directive to continue to use a grossly inflated number despite clear knowledge it is false demonstrates the repetitive and ongoing nature of defendants' propensity to engage in fraud.

[12] Despite this assertion in their motion papers, counsel for defendants, Christopher Kise, Esq, conceded during oral argument held on September 22, 2023, that square footage is, in fact, an objective number.

A discrepancy of this order of magnitude, by a real estate developer sizing up his own living space of decades, can only be considered fraud.[13]

OAG unquestionably satisfies its two-prong burden of demonstrating the SFCs from 2012-2016 calculated the value of the Triplex based on a false and misleading square footage, and that some of the defendants repeatedly and persistently used the SFCs to transact business.

Seven Springs Estate

Defendant Seven Springs LLC owns over 200 acres of contiguous land in the towns of Bedford, New Castle and North Castle in Westchester County, New York.

In 2000, non-party the Royal Bank of Pennsylvania appraised the "as is" market value of Seven Springs to be $25 million if converted to residential development. NYSCEF Doc. No. 825. In 2006, the same bank performed a new appraisal, which showed Seven Springs had an "as is" market value of $30 million. NYSCEF Doc. No. 826.

In 2012, Seven Springs LLC received another appraisal that estimated a six-lot subdivision on the New Castle portion of the property to have a fair market value of approximately $700,000 per-lot. NYSCEF Doc. No. 829 at 203-206.

In July 2014, because the Trump Organization was considering donating a conservation easement, it retained Cushman & Wakefield to provide a "range of value" of the Seven Springs property. NYSCEF Doc. Nos. 830, 831. Cushman & Wakefield's appraiser, David McArdle, analyzed the sale of eight lots in Bedford, six lots in New Castle, and ten lots in North Castle and determined the fair market value for all 24 lots was approximately $30 million. NYSCEF Doc. No. 831, 832.

Notwithstanding receiving market values from professional appraisals in 2000, 2006, 2012, and 2014 valuing Seven Springs at or below $30 million, Donald Trump's 2011 SFC reported the value to be $261 million, and his 2012, 2013 and 2014 SFCs reported the value to be $291 million.[14] NYSCEF Doc. Nos. 769, 770, 771, 772.

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[13] In fact, OAG demonstrates that as of 2012, no apartment sold in New York City had ever approached the price at which defendants valued the Triplex, noting that the highest overall sale at that time was $88 million for a Central Park West penthouse. The SFCs valued the Triplex at a staggering $180,000,000-$327,000,000 for the years 2012-2016. NYSCEF Doc. No. 1 at ¶276.

[14] The statutes of limitations have run for all claims that accrued before July 13, 2014. However, although not actionable by themselves, evidence of fraud that predates July 13, 2014, may still be used as evidence in evaluating OAG's request for permanent injunctive relief, wherein the Court must determine whether there has been "a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d 490, 496-97 (2016) (detailing standard for permanent injunctive relief under Executive Law 63(12) and "reject[ing] defendants' arguments that the Attorney General must show irreparable harm in order to obtain a permanent injunction").

In early 2016, Cushman & Wakefield performed another appraisal of Seven Springs, which included the planned development, and determined that as of December 1, 2015, the entire parcel was worth $56.6 million. NYSCEF Doc. Nos. 824 at 9; 875; 876.

Even giving defendants the benefit of the $56.6 million figure as of December 1, 2015, the value submitted on Donald Trump's 2014 SFC was inflated by over 400%. Accordingly, OAG has demonstrated liability for the false 2014 SFC for fraudulently inflating the value of Seven Springs.

Trump Park Avenue

Trump Park Avenue is a residential building included as an asset on Donald Trump's SFCs for the years 2011-2021. NYSCEF Doc. Nos. 769-779. In 2011, 12 of the unsold residential condominium units were subject to New York City's rent regulation laws. NYSCEF Doc. No. 948 at 3. By 2014, nine units remained subject to rent restrictions. NYSCEF Doc. No. 966. By 2020, six units remained subject to rent restrictions. NYSCEF Doc. No. 971.

A 2010 appraisal performed by the Oxford Group valued the 12 rent-stabilized units at $750,000 total, or $62,500 per unit. NYSCEF Doc. No. 952. A 2020 appraisal performed by Newmark Knight Frank valued the six units that remained subject to stabilization at $22,800,090 total, or $3,800,315 per unit. NYSCEF Doc. No. 972.

Notwithstanding, for the years 2014-2021, the Trump Organization submitted SFCs that valued these rent-restricted units as if they were unencumbered, inflating the value of each unit between as much 700% (in 2014) and 64% (in 2021). NYSCEF Doc. Nos. 772-779.

In an unsuccessful attempt to rebut OAG's prima facie demonstration, defendants proffer that the units are not overvalued because "the rent-stabilized units have the potential at some point in the future to be converted into unencumbered (by rent stabilization) units."[15] NYSCEF Doc. No. 1292 at 57. They further concede that "[t]his is the assumption the owner made when assessing potential asset pricing or value." Id.

[15] As every New Yorker knows, rent regulated units may be passed on from one generation to the next in perpetuity.

However, the SFCs are required to state "current" values, not "someday, maybe" values. At the time defendants provided the subject SFCs to third parties they unquestionably falsely inflated the value of the units based on a false premise that they were unrestricted.[16]

40 Wall Street

The Trump Organization, through defendant 40 Wall Street LLC, owns a ground lease at 40 Wall Street and pays ground rent to the landowner.

In 2010, Cushman & Wakefield appraised the Trump Organization's interest in 40 Wall Street at $200 million. NYSCEF Doc. Nos. 878-79. Cushman & Wakefield appraised again in 2011 and 2012, reaching valuations of between $200 and $220 million. NYSCEF Doc. Nos. 881-82. The Trump Organization possessed and was familiar with these appraisals. NYSCEF Doc. Nos. 817 at 135-138; 883.

Despite these appraisals, the 2011 and 2012 SFCs valued the Trump Organization's interest in the property at $524.7 million and $527.2 million, respectively, an overvaluation of more than $300 million each year.[17] NYSCEF Doc. Nos. 769, 770.

In 2015, Cushman & Wakefield once again appraised the property, and valued it at $540 million.[18] NYSCEF Doc. No. 887. Notwithstanding this appraised value, the 2015 SFC listed the value of 40 Wall Street at $735.4 million.[19] NYSCEF Doc. No. 773.

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[16] Mazars accountant Donald Bender testified that when he asked Jeffrey McConney, "Do you have any other appraisals?", Jeffrey McConney stated "I have nothing else," demonstrating an intent to conceal or mislead the accountants. NYSCEF Doc. No. 1262 at 243.

Further, Patrick Birney, a Trump Organization employee working directly under Jeffrey McConney, conceded that the Trump Organization maintained a spreadsheet for day-to-day operations on the Trump Park Avenue offering plan that included both the offering plan prices *and* the current market values, but that the Trump Organization concealed its own actual market estimates from Mazars by omitting the market value column in its spreadsheet and providing Mazars with only the offering plan prices. NYSCEF Doc. No. 946.

[17] Although any liability arising out of the submission of the 2011 and 2012 SFCs is time barred; as previously discussed, these submissions may be considered as evidence in support of OAG's request for injunctive relief.

[18] OAG plausibly asserts that this $540 million is also inflated; however, for purposes of this motion, OAG does not dispute the number, and argues that, even if the Court were to accept defendants' number as accurate, the 2015 SFC was still materially false, as it stated the value as nearly $200 million more than the $540 million appraisal. NYSCEF Doc. No. 766 at n 7.

[19] An email exchange dated August 4, 2014, between Allen Weisselberg and his son, Jack Weisselberg, a Ladder Capital employee, discusses the 2015 $540 million Cushman & Wakefield appraisal. NYSCEF Doc. No. 888. Notwithstanding direct knowledge of it, the 2015 SFC valued 40 Wall Street at nearly $200 million more. NYSCEF Doc. No. 773.

Defendants assert that overvaluations of two hundred million dollars are immaterial, as the "NYAG has produced no evidence to suggest... that Ladder Capital would have been uncomfortable allowing President Trump to guarantee the 40 Wall Street Loan if his net worth was only $1.9 billion, as the NYAG contends." NYSCEF Doc. No. 835 at 48. They further emphasize that "Ladder Capital has received in excess of $40 million in interest and 40 Wall Street LLC has never defaulted under the Loan."[20] Id.

Defendants' argument misses the mark. As has been explained to defendants many times, in many legal proceedings, and in painstaking detail, "where, as here, there is a claim based on fraudulent activity [under Executive Law 63(12)], disgorgement may be available as an equitable remedy, *notwithstanding the absence of loss to individuals or independent claims for restitution.*" Ernst & Young at 569 (emphasis added). Accordingly, it is not significant that the banks made money (or did not lose money)[21], or that they would have done business with the Trump Organization notwithstanding. The law is clear that the only requirements for liability to attach under a standalone Executive Law § 63(12) cause of action are (1) a finding that the SFCs were false and misleading; and (2) that defendants repeatedly or persistently used the SFCs to conduct business.

Accordingly, OAG has demonstrated liability for the false valuation of 40 Wall Street in the 2015 SFC.

Mar-a-Lago

Donald Trump purchased Mar-a-Lago in 1985. In 1993, he sought, and obtained, permission from the Town of Palm Beach to turn the property into a social club (NYSCEF Doc. No. 900), and on August 10, 1993, he entered into a "Declaration of Use Agreement" by which he agreed "the use of Land shall be for a private social club" and that "[a]ny additional uses of the Land shall be subject to approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Landmarks Preservation Commission of the Town, the Architectural Review Commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or any agencies under the foregoing governmental authorities." NYSCEF Doc. No. 915.

In 1995, Donald Trump signed a "Deed of Conservation and Preservation Easement" in which he gave up his right to use Mar-a-Lago for any purpose other than as a social club (the "1995 Deed"). NYSCEF Doc. No. 901. In 2002, Donald Trump signed a "Deed of Development Rights." NYSCEF Doc. No. 902. As part of granting a conversation easement to the National

[20] The defendant borrowers did not default on any loans; but we only know that with hindsight. Markets are volatile, and borrowers come in all shapes and sizes. The next borrower, or the one after that, might default, and if its SFCs are false, the lender might unfairly be left holding the bag. This will distort the lending marketplace and deprive other potential borrowers of the opportunity to obtain loans and create wealth.

[21] The subject loans made the banks lots of money; but the fraudulent SFCs cost the banks lots of money. The less collateral for a loan, the riskier it is, and a first principal of loan accounting is that as risk rises, so do interest rates. Thus, accurate SFCs would have allowed the lenders to make even more money than they did.

Trust for Historic Preservation, Donald Trump agreed that "Trump intend[s] to forever extinguish [his] right to develop or use the Property for any purpose other than club use" (the "2002 Deed"). The 2002 Deed also specifically "limits changes to the Property including, without limitation, the division or subdivision of the Property for any purpose, including use as single family homes, the interior renovation of the mansion, which may be necessary and desirable for the sale of the Property as a single family residential estate, the construction of new buildings and the obstruction of open vistas." Id. In exchange for granting the easement, Mar-a-Lago was taxed at a significantly lower rate (the club rate) than it otherwise would have been (the private home rate). NYSCEF Doc. No. 903.

From 2011-2021, the Palm Beach County Assessor appraised the market value of Mar-a-Lago at between $18 million and $27.6 million. NYSCEF Doc. No. 905.

Notwithstanding, the SFCs' values do not reflect these land use restrictions. Donald Trump's SFCs for 2011-2021 value Mar-a-Lago at between $426,529,614 million and $612,110,496, an overvaluation of *at least 2,300%*, compared to the assessor's appraisal. NYSCEF Doc. Nos. 769-779.

In an attempt to rebut the OAG's demonstration, defendants rely on the opinion affidavit of Lawrence Moens, who they purport is "the most accomplished and knowledgeable ultra-high net worth real estate broker in Palm Beach, Florida."[22] Moens claims that "the SOFC were and are appropriate and indeed *conservative*." NYSCEF Doc. No. 1292 at 35-36 (emphasis added). The Moens' affidavit states in a conclusory fashion that because he believes "this unique property offers to an elite purchaser the unparalleled opportunity to own an exclusive and extensive family compound in the most desirable sections of Palm Beach... the valuations in the SOFC were reasonable and below my estimate for the market value of the property each year." NYSCEF Doc. No. 1435. Moreover, Moens opines that "[i]f Mar-A-Lago was available for sale, I am confident that in short order, I would be in a position to produce a ready, willing and able buyer who would have interest in securing the property for their personal use as a residence, or even, their own club." Id. at 29. Critically, Moens does not opine *at what price* he is "confident" he could find a buyer (although he opines separately, without relying on any objective evidence, that he believes that as of 2023 the property is worth $1.51 *billion*[23]).

It is well-settled that: "[w]here the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation, however, the opinion should be given no probative force and is insufficient to withstand summary judgment." Diaz v New York Downtown Hosp., 99 NY2d 542, 544 (2002); see also Gardner v Ethier, 173 AD2d 1002, 1003-4 (3d Dept 1991) ("the expert

[22] At oral argument, his domain of expertise was enlarged to nationwide status.

[23] In his sworn deposition, when asked "[w]ho were the dozen or so [qualified] buyers that you were referencing in your report, Lawrence Moens replied: "I could dream up anyone from Elon Musk to Bill Gates and everyone in between. Kings, emperors, heads of state. But with net worths in the multiple billions. I don't know how many people in the world have a net worth of more than $10 billion, but I think it's quite a number. There are a lot." NYSCEF Doc. No. 1428 at 184-185. Obviously, this Court cannot consider an "expert affidavit" that is based on unexplained and unsubstantiated "dream[s]."

affidavit is also inadmissible because it is conclusory and the views are apparently based to a great extent on hearsay statements from unspecified witnesses as well as upon speculations on the part of the expert"). Accordingly, defendants' reliance on the Moens affidavit is unpersuasive and certainly insufficient to rebut OAG's prima face case.

Defendants further imply that they may ignore the plain language of the 2002 Deed restrictions because they would likely be able to use the Florida judicial system to get out of their contractual requirements; they further assert that because they may successfully breach their contract in the future, they were not required to consider the restrictions of the 2002 Deed when valuing the property. NYSCEF Doc. 1292 at 48-51. This argument is wholly without merit. At the time in which the defendants submitted the SFCs, the restrictions were in effect, and any valuations represented to third-parties must have incorporated those restrictions; failure to do so is fraud. Assets values that disregard applicable legal restrictions are by definition materially false and misleading.

Accordingly, OAG has demonstrated liability for the false valuation of Mar-a-Lago as appears in the SFCs from 2014-2021.

Aberdeen

The Trump Organization owns a golf course located in Aberdeen, Scotland ("Aberdeen"). The value assigned to Aberdeen was comprised of two parts: a value for the golf course and a value for the development of the non-golf course property, the latter of which is the focus here. Developing any of the non-golf course property required that the local Scottish authorities approve any proposed plans.

From 2011-2014, Donald Trump's SFC reported that he had "received outline planning permission [from local Scottish authorities] in December 2008 for... a residential village consisting of 950 holiday homes and 500 single family residences and 36 golf villas." NYSCEF Doc. Nos. 769-776.

The Trump Organization had "outline planning permission" to build a total of 1,486 homes. Notwithstanding, the 2014-2018 SFCs valuations of Aberdeen assumed the Trump Organization had received approval to build 2,500 homes, despite never having received such approval. NYSCEF Doc. Nos. 772-776, 907.

Additionally, the approval of the 950 holiday homes and 36 golf villas came with severe restrictions on their use: they could be used solely as rental properties and could be rented for no more than 12 weeks in any calendar year. NYSCEF Doc. No. 908 at 13. The Trump Organization submitted financial documentation to the local Scottish authorities representing that these short-term rentals would not be profitable and therefore would not add any value to Aberdeen. NYSCEF Doc. Nos. 909 at 36, 910 at 7. Consequently, the only profitable development of Aberdeen would have been the 500 single family residences. In July 2017, non-party Ryden LLP, acting on behalf of the Trump Organization, prepared a development appraisal for Aberdeen wherein it assessed the profit from developing 557 homes and estimated profits in the range of £16,525,000-£18,546,000. NYSCEF Doc. No. 1231 at 10.

In May 2018, the Trump Organization applied to the Aberdeen City Council to reduce the scope of the development project to 550 dwellings, consisting of 500 private residences, 50 leisure/resorts units, and zero holiday homes (having determined they were not profitable). NYSCEF Doc. No. 911. In September 2019, the Aberdeen City Council approved the proposal for a reduction in the proposed development, but restricted the 50 leisure/resort units, as they had the holiday homes, to be "occupied on a holiday letting or fractional ownership basis only and for no other purposes whatsoever including use as a permanent residential unit… ." NYSCEF Doc. No. 907 at 7.

Notwithstanding, the 2019 SFC, finalized a month after the latest approval, derived a value based on the assumption that 2,035 private residential homes could be developed. Adjusting the values to reflect the permissible 500 private residences reduces the value of the Aberdeen undeveloped property as reflected in the 2019 SFC by £164,196.704. NYSCEF Doc. No. 777 at 16, 789 at Cells G561-619, 912.

Although defendants wholly fail to address Aberdeen in any of their three memos of law, in their response to OAG's statement of material facts, they state that "Defendants dispute the veracity of the appraisal because President Trump, as a land developer, took optimistic views of potential future value which is not contemplated in the appraisal, thereby undervaluing Trump Aberdeen." NYSCEF Doc. No. 1293 at 82-83. For all the reasons discussed *supra*, this defense fails.

Accordingly, OAG has demonstrated liability for the false valuation of Aberdeen as appears in the SFCs from 2014-2019.

US Golf Clubs

Donald Trump owns or leases a number of golf clubs across the United States and abroad that are included as assets on his SFCs. NYSCEF Doc. Nos. 769-779. The value for these golf clubs is provided in the aggregate in the SFCs, although supporting accounting spreadsheets evidence the breakdown of the values assigned to each club. NYSCEF Doc. Nos. 781-791.

The "Trump Brand Premium"

The evidence indicates that for the years 2013-2020, the SFCs relied on values that included a 15% or 30% "premium" based on the "Trump brand" for the following seven golf clubs: Trump National Golf Course ("TNGC") Jupiter, TNGC LA, TNGC Colts Neck, TNGC Philadelphia, TNGC DC, TNGC Charlotte, and TNGC Hudson Valley. NYSCEF Doc. Nos. 783-790. However, the SFCs for those years (and, indeed, all the years before this Court), also contained express language stating: "The goodwill attached to the Trump name has significant value that has *not* been reflected in the preparation of this financial statement." NYSCEF Doc. Nos. 769-779 (emphasis added). Accordingly, the SFCs "double dip," both purporting not to include a brand premium while simultaneously including one of 15% or 30%.

In opposition, defendants submit the affidavit of Eli Bartov, an accounting professor at New York University, who distinguishes between overall brand value and brand value ascribed to individual golf courses. His point, ensconced in numerous lines of academic jargon, seems to be that defendants said that they were eschewing the former and opting only for the latter. NYSCEF Doc. No. 1378 at 14-15. This is a red herring and factually incorrect. The SFCs

clearly state that they do not include a brand value for *any* of the properties included in the SFCs; indeed, the SFCs emphatically declare that "[t]he goodwill attached to the Trump name has significant financial value *that has not been reflected in the preparation of this financial statement.*" NYSCEF Doc. Nos. 769-779 (emphasis added). Perhaps Donald Trump could have ascribed a brand value to golf courses that he viewed as "special," but he was obligated to disclose those exceptions when he represented that the SFCs did not reflect his brand value.

TNGC Briarcliff and TNGC LA

The valuations of TNGC Briarcliff and TNGC LA were each comprised of a value for the golf course and a value for the undeveloped land. As the Trump Organization was considering donating a conservation easement over both properties, they had both properties appraised.

An April 2014 appraisal valued the golf club portion of TNGC Briarcliff at $16,500,000; later that same year, Donald Trump valued the golf club portion of TNGC Briarcliff at $73,430,217, *an inflation of more than 300%*, in his SFC. NYSCEF Doc. Nos. 923 at 147; 785 at Row 257. A 2015 appraisal valued the golf club portion of TNGC LA at $16,000,000 as of December 26, 2014; the 2015 SFC valued the golf club portion of TNGC LA at $56,615,895, *an inflation of more than 200%.* NYSCEF Doc. Nos. 924 at 151; 785 at Row 386.

In an attempt to rebut this strong showing of fraud, defendants argue that they were not obligated to use market value, but, instead, were permitted to use the "fixed assets" approach to valuation, pursuant to which defendants may "value" a property by aggregating the money spent to acquire and maintain a property. NYSCEF Doc. No. 1292. They further rely on the Bartov affidavit, which states, in wholly conclusory fashion that: "[t]he assertion that 'Using fixed assets approach does not present the golf clubs at their estimated current value because the approach ignores market conditions and the behavior of informed buyers and sellers' is unsubstantiated and false." NYSCEF Doc. No. 1378 at 29.

Bartov is incorrect. Each of the corresponding SFCs include representations that "[a]ssets are stated at their estimated current values..." NYSCEF Doc. Nos. 769-779.[24] Accordingly, it is false and misleading to use a fixed-assets evaluation, which is completely different. The price for which you purchase property is not necessarily the price for which you can sell it. The latter, not the former, matters to lenders who want adequate collateral.

The Membership Liabilities

As part of the purchase of several of the golf club properties, Donald Trump agreed to assume the obligation to pay back refundable non-interest-bearing long-term membership deposits. However, notwithstanding that these liabilities must be satisfied in the future, the SFCs from 2012-2021 value them at $0. NYSCEF Doc. Nos. 769-779. This is false; they are a liability in the millions of dollars.

[24] In their response to OAG's statement of material facts, defendants concede that "GAAP defines Estimated Current Value as 'the amount at which the item could be exchanged between a buyer and seller, each of whom is well informed and willing, and neither of whom is compelled to buy or sell." NYSCEF Doc No. 1293 at 17.

However, the SFCs all state: "The fact that Mr. Trump will have the use of these funds for that period without cost and that the source of repayment will most likely be a replacement membership has led him to value this liability at zero." See e.g., NYCSCEF Doc. No. 772.

Although it was false to report the membership liabilities as $0, it was not, under the circumstances, *misleading*, as the SFCs state that the reason for so doing. Accordingly, OAG cannot prevail on liability as a result of the failure to report the membership liabilities.

Yet, as discussed *supra*, OAG has demonstrated liability for submitting fraudulent SFCs in 2014-2020 that falsely value the aforementioned US Golf Clubs based on undisclosed brand premiums and failure to report "current" values.

Vornado Partnership Properties

Donald Trump has a 30% limited partnership interest with non-party Vornado Realty Trust in entities that own office buildings in New York City (at 1290 Avenue of the Americas, hereinafter "1290 AOA") and San Francisco at 555 California Street.

Cash/Liquid Classification

Donald Trump's 30% limited partnership stake does not permit him to use or withdraw funds held by the partnerships. NYSCEF Doc. Nos. 916, 917. Notwithstanding, Donald Trump and his trustees classified his 30% interest in the Vornado partnership as a liquid/cash asset on his SFCs for the years 2013-2021. NYSCEF Doc. No. 771-779. This was even though it is "undisputed" by defendants that Donald Trump does not have "the right to use or withdraw [these] funds." NYSCEF Doc. No. 1293 at ¶387-388.

Defendants assert that "[e]ven if the cash held in the partnership was misclassified and should have been reported elsewhere on the SOFCs as an asset (e.g., in the value of the partnership interest), it would not have inflated the total value of cash or President Trump's net worth reported on the SOFCs." NYSCEF Doc No. 1292 at 39.

This argument does not hold any water. Put simply, it was false and misleading for defendants to indicate that it had access to between $14,221,800 and $93,126,589 in liquid assets, sometimes nearly a third of the total cash it claimed, when in fact those assets were completely illiquid. NYSCEF Doc. No. 1293 ¶ 403.

The Appraisals

Cushman & Wakefield appraised the value of 1290 AOA at $2 billion as of November 1, 2012, and $2.3 billion as of November 1, 2016. NYSCEF Doc. No. 919 at 5-6.

However, Donald Trump's 2014 SFC calculated his 30% share based on a purported value of $3,078,338,462; his 2015 SFC was based on a purported value of $2,985,819,936; and his 2016 SFC was based on a purported value of $3,055,000,000. NYSCEF Doc. Nos. 784 at Rows 709-715, 785 at Rows 748-755, 785 at Rows 779-784. This resulted in overvaluations of Donald Trump's 30% interest in 1290 AOA of between $205-$233 million dollars for those years.

CBRE appraised 1290 AOA and determined its value at $2 billion as of October 7, 2021. NYSCEF Doc. No. 947. Nonetheless, the 2021 SFC was calculated based upon a purported value of $2,574,813,800, an overvaluation of Donald Trump's 30% share by $172 million dollars. NYSCEF Doc. No. 791 at Row 918.

The instant motions do not task this Court with determining which appraisals are the most accurate, which would present issues of fact.[25] Rather, time and time again, the Court is not comparing one appraisal to another; it is comparing an independent professional appraisal to a pie-in-the-sky dream of concocted potential.

Accordingly, OAG has demonstrated liability for submitting fraudulent SFCs overvaluing Donald Trump's interest in the Vornado partnership in 2014-2016 and 2021.

Licensing Deals

Each of Donald Trump's SFCs from 2011-2021 has an asset category entitled "Real Estate Licensing Deals," which the SFC represents is value derived from "associations with others for the purpose of developing and managing properties" and the "cash flow that is expected to be derived... from these associations as their potential is realized." NYSCEF Doc. Nos. 769-779. The SFCs further state that "[i]n preparing [these] assessment[s], Mr. Trump and his management considered only situations which have evolved to the point where signed arrangements with the other parties exist and fees and other compensation which he will earn are reasonably quantifiable." Id.

Despite this express language, the SFCs from 2014-2018 and 2020-2021 include valuations of intra-organization deals, all between entities under the Trump Organization umbrella, in this category of assets. NYSCEF Doc. Nos. 1014, 1018, 1019, 1021, 1023, 1024, 1062, 1063, 1064. It was flatly false and misleading to include values of deals between Trump Organization entities while expressly representing in the SFCs that such assets included only valuations derived from "association with others." Improperly including these intra-organization deals resulted in an overvaluation of up to $224 million in 2014, $110 million in 2015, $120 million in 2016, $113 million in 2017, $115 million in 2018, $97 million in 2020, and $106 million in 2021. Id.

OAG has demonstrated liability for the false and misleading valuation of intra-company licensing deals on the SFCs from 2014-2018 and 2020-2021.

The Other Loans

OAG has established that defendants submitted false SFCs after July 13, 2014, pursuant to their other loan commitments. Defendants submitted SFCs to Deutsche Bank as part of their contractual obligations arising out of three different loans: (1) a Chicago Loan, undertaken by 401 North Wabash Venture LLC; (2) a Doral Loan, undertaken by Trump Endeavor LLC; and (3) an Old Post Office Loan, undertaken by Trump Old Post Office LLC. Defendants certified the accuracy of these SFCs to Deutsche Bank for the years 2014-2019 and 2021[26] as part of their

[25] Nor is this Court asked to determine Donald Trump's total wealth.

[26] The gap for 2020 may have been due to the COVID-19 pandemic.

contractual obligations. NYSCEF Doc. Nos. 1097, 1098, 1099, 1100, 1102, 1104, 1106, 1124, 1126, 1155, 1156, 1157.

The Individual Defendants

OAG has demonstrated liability on behalf of all the named individual defendants: (1) **Donald Trump**, as each and every SFC was issued on behalf of "Donald J. Trump"; (2) **Donald Trump, Jr.**, who, along with Allen Weisselberg, certified the accuracy of the SFCs for 2016-2020, and who singlehandedly certified the accuracy of the 2021 SFC (NYSCEF Docs. No. 808-813); (3) **Eric Trump**, who is the listed source for the Seven Springs valuation in 2014,[27] and who signed several guarantor compliance certificates in 2020 and 2021 for Donald J. Trump (NYSCEF Doc. No. 802); (4) **Allen Weisselberg**, who certified the accuracy of the SFCs from 2014-2021 (NYSCEF Doc. Nos. 806-812); (5) and **Jeffrey McConney**, who led the process of preparing all the SFCs since the 1990s[28] (NYSCEF Doc. No. 822 at 52-68).

The Entity Defendants

It is settled law that "[a] parent corporation will not be held liable for the torts or obligations of a subsidiary *unless it can be shown that the parent exercised complete dominion and control over the subsidiary*." Potash v Port Auth. of New York & New Jersey, 279 AD2d 562, 562 (2d Dept 2001) (emphasis added). Here, it is undisputed that Donald Trump, through one corporate form or another, exercised complete control over the umbrella of entities operating in furtherance of, or on behalf of, "the Trump Organization."

Defendants do not dispute that DJT Holdings LLC and DJT Holdings Managing Member LLC are entities that sit at the top of the Trump Organization's organizational chart and together own many of the Trump-affiliated entities that comprise the Trump Organization. DJT Holdings Managing Member LLC owns 100% of the Trump Organization and DJT Holdings LLC owns 100% of the Trump Organization LLC. NYSCEF Doc. Nos. 4, 819 at ¶1.

Accordingly, OAG has established liability on behalf of all the named entity defendants: (1) **The Trump Organization Inc.**, **the Trump Organization LLC**, **DJT Holdings LLC**, and **DJT Holdings Managing Member LLC**, as each participated in the preparation, submission and certification of the SFCs after July 13, 2014 through the acts of the individual defendants as described *supra*; (2) the **DJT Revocable Trust**, as both Donald Trump Jr. and Allen Weisselberg certified the accuracy of the 2016-2019 SFCs in their capacities as "Trustee, the Donald J. Trump Revocable Trust dated April 7, 2014, as amended" (NYSCEF Doc. No. 808); (3) **Trump Endeavor LLC**, which was the borrower on the Doral Loan, for which SFCs were submitted after July 13, 2014; (4) **401 North Wabash Venture LLC**, which was the borrower on a loan for "Trump Chicago," under which SFCs were required to be (and were) submitted

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[27] Eric Trump also reaffirmed the SFCs accuracy on July 9, 2019. NYSCEF Doc. Nos. 782 at Row 679, 783 at Rows 638-40, 784 at Row 660, 1183.

[28] Jeffrey McConney acknowledged his personal role in preparing supporting data for Donald Trump's SFCs beginning in 2011, testifying that: "I assemble the documentation" and that he would send both supporting data spreadsheets and backup documentation to the accountants. He further conceded that the supporting data spreadsheets were referred to as "Jeff's supporting data" or "Jeff's supporting schedule." NYSCEF Doc. No. 822 at 40, 67-68, 212, 294.

after July 13, 2014; (5) **Trump Old Post Office LLC**, as it was the borrower on the "Old Post Office" loan, under which SFCs were required to be (and were) submitted after July 13, 2014; and **Seven Springs LLC**, the borrowing entity (as described *supra*) under which SFCs were required to be (and were) submitted after July 13, 2014.

Injunctive Relief

OAG has prevailed on liability on its first cause of action pursuant to Executive Law § 63(12) as against all defendants: Donald J. Trump; Donald Trump, Jr.; Eric Trump; Allen Weisselberg; Jeffrey McConney; the DJT Revocable Trust; the Trump Organization Inc; the Trump Organization LLC; DJT Holdings LLC; DJT Holdings Managing Member LLC; Trump Endeavor 12 LLC; 401 North Wabash Venture LLC; Trump Old Post Office LLC; 40 Wall Street LLC; and Seven Springs LLC.

If liability is established under Executive Law § 63(12), the statute itself provides that the attorney general may obtain "an order enjoining the continuance of such business activity or of any fraudulent or illegal acts... and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of ... section one hundred thirty of the general business law...."

"[T]he Attorney General may obtain permanent injunctive relief under... Executive Law § 63(12) upon a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d at 496-97 (further stating "[t]his is not a 'run of the mill' action for an injunction, but rather one authorized by remedial legislation, brought by the Attorney-General on behalf of the People of the State and for the purposes of preventing fraud and defeating exploitation") (internal citations omitted).

Having found, at the commencement of the action, that OAG had preliminarily demonstrated defendants' "propensity to engage in persistent fraud," this Court appointed the Hon. Barbara S. Jones (ret.) as an independent monitor "to ensure there is no further fraud or illegality that violates § 63(12) pending the final disposition of this action." NYSCEF Doc. No. 194. On August 3, 2023, Judge Jones reported as follows:

> [S]ince my appointment I have reviewed material financial and accounting information submitted by the Trump Organization. As part of my review, I have made preliminary observations regarding certain current financial disclosures with respect to the Trump Organization's reporting of financial information. Specifically, I have observed that information regarding certain material liabilities provided to lenders – such as intercompany loans between or among Trust entities and Donald J. Trump, certain of the Trust's contingent liabilities, as well as refundable golf club membership deposits—has been incomplete. The Trust also has not consistently provided all required annual and quarterly certifications attesting to the accuracy of certain financial statements.

> In addition, annual audited financial statements for certain entities, prepared by an external accounting firm, list depreciation expenses. However, interim internally prepared financial statements provided to third parties for these same entities inconsistently report depreciation expenses.

NYSCEF Doc. No. 647. Even with a preliminary injunction in place, and with an independent monitor overseeing their compliance, defendants have continued to disseminate false and misleading information while conducting business. This ongoing flouting of this Court's prior order, combined with the persistent nature of the false SFCs year after year, have demonstrated the necessity of canceling the certificates filed under GBL § 130, as the statute provides. People v Northern Leasing, 70 Misc 3d 256, 279-80 (Sup Ct, NY County 2020) (denying a trial on the petition and ordering the LLC respondents to dissolve upon a finding of persistent fraud under Executive Law § 63(12)).

Having prevailed on liability on a standalone Executive Law § 63(12) cause of action, the Attorney General is entitled to the first two prayers for relief sought in her complaint: (1) canceling any certificate filed under and by virtue of the provisions of New York General Business Law § 130 for all the entity defendants found liable, as well as any other entity controlled or beneficially owned by the individual defendants found liable herein, which and who participated in or benefitted from the foregoing fraudulent schemes; and (2) appointing an independent monitor to oversee compliance, financial reporting, valuations, and disclosures to lenders, insurers, and tax authorities at the Trump Organization. NYSCEF Doc. No. 1 at 213.

Remaining Issues to be Determined at Trial

Anything presented in the parties' moving papers that this Court has not ruled upon in this Decision and Order, including determinations on liability for the second through seventh causes of action, the amount of disgorgement of profits to which OAG is entitled, and determinations on the third through ninth prayers for relief sought by OAG in its complaint, presents disputed issues of fact that shall proceed to trial.

Conclusion

For the reasons stated herein, it is hereby

ORDERED that defendants' motion for summary judgment is denied; and it is further

ORDERED that plaintiff's motion for sanctions is granted in part, to the extent of sanctioning Michael Madaio, Esq. (Habba Madaio & Associates, LLP), Clifford S. Robert, Esq. (Robert & Robert PLLC), Michael Farina Esq. (Robert & Robert PLLC), Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC), and Armen Morian (Morian Law PLLC) in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Decision and Order; and it is further

ORDERED that plaintiff's motion for partial summary judgment on its first cause of action is granted in part, to the extent of finding defendants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, the DJT Revocable Trust, the Trump Organization Inc, the Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC to be liable as a matter of law for persistent violations of Executive Law § 63(12); and it is further

ORDERED that any certificates filed under and by virtue of GBL § 130 by any of the entity defendants or by any other entity controlled or beneficially owned by Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney are canceled; and it is further

ORDERED that within 10 days of the date of this order, the parties are directed to recommend the names of no more than three potential independent receivers to manage the dissolution of the canceled LLCs; and it is further

ORDERED that the Hon. Barbara S. Jones (ret.) shall continue to serve as an independent monitor of the Trump Organization until further Court order; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

9/26/2023
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[X]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

v.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

Defendants.

Armen Morian, Esq.,

Attorney for Defendants.

Index No: 452564/2022

Engoron, J.S.C.

AFFIRMATION OF SERVICE

Motion Seq. No. 028

ARMEN MORIAN, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms the following statements to be true under the penalty of perjury:

1. I am principal attorney of the law firm of Morian Law PLLC, and am not a party to the above-captioned action.

2. On October 24, 2023, I served the within Notice of Appeal and Informational Statement, both dated October 24, 2023, together with a copy of the Decision and Order of the Supreme Court of the State of New York, New York County (Honorable Arthur F. Engoron,

J.S.C.), dated September 26, 2023, with Notice of Entry, upon the following parties by filing on NYSCEF, with a courtesy copy of the filing sent by email to the email addresses stated below:

Kevin C. Wallace, Esq. Colleen K. Faherty, Esq. Office of the New York State Attorney General 28 Liberty Street New York, New York 10005 kevin.wallace@ag.ny.gov colleen.faherty@ag.ny.gov *Counsel for Plaintiff*	
Alina Habba, Esq. Michael Madaio, Esq. Habba Madaio & Associates, LLP 112 West 34th Street, 17th & 18th Floors New York, New York 10120 ahabba@habbalaw.com mmadaio@habbalaw.com *Counsel for Defendants Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC*	Clifford S. Robert, Esq. Michael Farina, Esq. Rober & Robert PLLC 526 RXR Plaza Uniondale, New York 11556 Phone: (516) 832-7000 crobert@robertlaw.com mfarina@robertlaw.com *Counsel for Donald Trump, Jr., and Eric Trump*

Dated: New York, New York
October 24, 2023

Respectfully submitted,

ARMEN MORIAN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

v.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

Defendants.

Michael Madaio, Esq.,

Attorney for Defendants.

Index No: 452564/2022

Engoron, J.S.C.

NOTICE OF APPEAL

Motion Seq. No. 028

PLEASE TAKE NOTICE THAT, pursuant to CPLR §§ 5511 and 5515, Michael Madaio, Esq. (hereinafter referred to as "Mr. Madaio") hereby appeals to the Appellate Division, First Department, from the Decision and Order on Motion by Hon. Arthur F. Engoron, J.S.C., dated September 26, 2023 (NYSCEF Doc. No. 1533), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on September 27, 2023, and served by Notice of Entry on September 27, 2023, which granted Plaintiff's motion for sanctions.

This appeal is taken from each and every part of the Order insofar as Mr. Madaio is aggrieved. A copy of the Informational Statement pursuant to 22 NYCRR 1250.3(a) is attached hereto as Exhibit A.

Dated: New York, New York
October 25, 2023

Respectfully submitted,

ALINA HABBA
MICHAEL MADAIO
HABBA MADAIO &
ASSOCIATES LLP
112 West 34th Street,
17th & 18th Floors
New York, New York 10120
Phone: (908) 869-1188
Facsimile: (908) 450-1881
E-mail: ahabba@habbalaw.com
mmadaio@habbalaw.com
Attorneys for Non-Party
Michael Madaio

EXHIBIT "A"

Supreme Court of the State of New York
Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

- against -

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC.,THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type

- ☒ Civil Action
- ☐ CPLR article 75 Arbitration
- ☐ Action Commenced under CPLR 214-g
- ☐ CPLR article 78 Proceeding
- ☐ Special Proceeding Other
- ☐ Habeas Corpus Proceeding

Filing Type

- ☒ Appeal
- ☐ Original Proceedings
  - ☐ CPLR Article 78
  - ☐ Eminent Domain
  - ☐ Labor Law 220 or 220-b
  - ☐ Public Officers Law § 36
  - ☐ Real Property Tax Law § 1278
- ☐ Transferred Proceeding
  - ☐ CPLR Article 78
  - ☐ Executive Law § 298
- ☐ CPLR 5704 Review

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

☐ Administrative Review	☒ Business Relationships	☒ Commercial	☐ Contracts
☐ Declaratory Judgment	☐ Domestic Relations	☐ Election Law	☐ Estate Matters
☐ Family Court	☐ Mortgage Foreclosure	☐ Miscellaneous	☐ Prisoner Discipline & Parole
☐ Real Property (other than foreclosure)	☒ Statutory	☐ Taxation	☐ Torts

Appeal

Paper Appealed From (Check one only):

If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

☐ Amended Decree	☐ Determination	■ Order	☐ Resettled Order
☐ Amended Judgement	☐ Finding	☐ Order & Judgment	☐ Ruling
☐ Amended Order	☐ Interlocutory Decree	☐ Partial Decree	☐ Other (specify):
■ Decision	☐ Interlocutory Judgment	☐ Resettled Decree	
☐ Decree	☐ Judgment	☐ Resettled Judgment	

Court: Supreme Court	County: New York
Dated: 09/26/2023	Entered: 09/27/2023
Judge (name in full): Hon. Arthur F. Engoron	Index No.: 452564/2022
Stage: ■ Interlocutory ☐ Final ☐ Post-Final	Trial: ☐ Yes ■ No If Yes: ☐ Jury ☐ Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? ■ Yes ☐ No

If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

2023-04925

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: ☐ Order to Show Cause ☐ Notice of Petition ☐ Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court	County: Choose County
Judge (name in full):	Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Michael Madaio, Esq., appeals from the Decision and Order of Supreme Court, New York County (Hon. Arthur F. Engoron, J.S.C.), dated September 26, 2023 and entered by the Clerk of the Court on September 27, 2023, which granted Plaintiff's motions for sanctions.

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Whether Supreme Court committed errors of law and/or fact, abused its discretion, and/or acted in excess of its jurisdiction by, inter alia, granting Plaintiff's motion for sanctions against Michael Madaio, Esq. in the amount of $7,500.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	PEOPLE OF THE STATE OF NEW YORK	Plaintiff	Respondent
2	DONALD J. TRUMP	Defendant	None
3	DONALD TRUMP, JR.	Defendant	None
4	ERIC TRUMP	Defendant	None
5	ALLEN WEISSELBERG	Defendant	None
6	JEFFREY MCCONNEY	Defendant	None
7	THE DONALD J. TRUMP REVOCABLE TRUST	Defendant	None
8	THE TRUMP ORGANIZATION, INC.	Defendant	None
9	THE TRUMP ORGANIZATION LLC	Defendant	None
10	DJT HOLDINGS LLC	Defendant	None
11	DJT HOLDINGS MANAGING MEMBER	Defendant	None
12	TRUMP ENDEAVOR 12 LLC	Defendant	None
13	401 NORTH WABASH VENTURE LLC	Defendant	None
14	TRUMP OLD POST OFFICE LLC	Defendant	None
15	40 WALL STREET LLC	Defendant	None
16	SEVEN SPRINGS LLC	Defendant	None
17	Michael Madaio, Esq.	Petitioner	Appellant
18			
19			
20			

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Kevin C. Wallace, Esq. and Colleen K. Faherty, Esq., Office of the New York State Attorney General			
Address: 28 Liberty Street			
City: New York	State: New York	Zip: 10005	Telephone No: 212-416-6046
E-mail Address: kevin.wallace@ag.ny.gov; colleen.faherty@ag.ny.gov			
Attorney Type: ☐ Retained ☐ Assigned ■ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 1			
Attorney/Firm Name: Alina Habba, Esq. and Michael Madaio, Esq., Habba Madaio & Associates, LLP			
Address: 112 West 34th Street, 17th &18th Floors			
City: New York	State: New York	Zip: 10020	Telephone No: 908-869-1188
E-mail Address: ahabba@habbalw.com; mmadaio@habbalaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 2, 5-17			
Attorney/Firm Name: Christopher M. Kise, Esq., Continental PLLC			
Address: 101 North Monroe Street, Suite 750			
City: Tallahassee	State: Florida	Zip: 32301	Telephone No: 305-677-2707
E-mail Address: ckise@continentalpllc.com			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ■ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):7, 10-16			
Attorney/Firm Name: Clifford S. Robert, Esq. and Michael Farina, Esq., Robert & Robert PLLC			
Address: 526 RXR Plaza			
City: Uniondale	State: New York	Zip: 11556	Telephone No: 516-832-7000
E-mail Address: crobert@robertlaw.com; mfarina@robertlaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):3-4			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

-against-

DONALD J. TRUMP, *et al.*,

Defendants.

Index No. 452564/2022

NOTICE OF ENTRY

PLEASE TAKE NOTICE that annexed hereto is a true and correct copy of the Decision and Order of the Honorable Arthur F. Engoron, J.S.C. dated September 26, 2023, on Motion Sequence Numbers 027, 028, and 029 (NYSCEF Nos. 1531, 1532, 1533), filed and entered in the Office of the Clerk of the Supreme Court, New York County on the 27th day of September, 2023.

Dated: New York, New York
September 27, 2023

LETITIA JAMES
Attorney General of the State of New York

By: */s/ Colleen K Faherty*
Colleen K. Faherty
Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6046
colleen.faherty@ag.ny.gov

Attorney for the People of the State of New York

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON **PART** 37

Justice

----------X

INDEX NO. 452564/2022

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

MOTION DATES 08/30/2023, 08/30/2023, 09/05/2023

Plaintiff,

MOTION SEQ. NO. 026, 027, 028

- v -

DONALD J. TRUMP, DONALD TRUMP JR, ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

DECISION + ORDER ON MOTIONS

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 026) 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1292, 1293, 1294, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415,

1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1442, 1443, 1444, 1445, 1446, 1447

were read on this motion for PARTIAL SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 027) 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1474

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 028) 1263, 1264, 1265, 1276, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473

were read on this motion for SANCTIONS.

Upon the foregoing documents, it is hereby ordered that defendants' motion for summary judgment is denied, plaintiff's motion for partial summary judgment is granted in part, and plaintiff's motion for sanctions is granted in part, all as detailed herein.

This action arises out of a years-long investigation that plaintiff, the Office of the Attorney General of the State of New York ("OAG"), conducted into certain business practices that defendants engaged in from 2011 through 2021. OAG alleges that the individual and entity defendants committed repeated and persistent fraud by preparing, certifying, and submitting to lenders and insurers false and misleading financial statements, thus violating New York Executive Law § 63(12).

Procedural Background

In 2020, OAG commenced a special proceeding seeking to enforce a series of subpoenas against various named defendants and other persons and entities. This Court presided over that proceeding and issued several orders compelling compliance with OAG's subpoenas. See People v The Trump Org., Sup Ct, NY County, Index No. 541685/2020. During that proceeding, OAG and the Trump Organization entered into an agreement, which, broadly speaking, tolled the statute of limitations from November 5, 2020, through May 31, 2022. NYSCEF Doc. No. 1260.

On November 3, 2022, this Court found preliminarily that defendants had a propensity to engage in persistent fraud by submitting false and misleading Statements of Financial Condition ("SFCs") on behalf of defendant Donald J. Trump ("Donald Trump"). NYSCEF Doc. No. 183. Accordingly, the Court granted a preliminary injunction against any further fraud and appointed the Hon. Barbara S. Jones (ret.) as an independent monitor to oversee defendants' financial statements and significant asset transfers. NYSCEF Doc. Nos. 193 and 194.

Defendants moved to dismiss the complaint. In a Decision and Order dated January 6, 2023, this Court denied the motion. NYSCEF Doc. Nos. 453. Defendants appealed, resulting in a January 6, 2023 Order wherein the Appellate Division, First Department modified this Court's order to the extent of: (1) declaring that the "continuing wrong doctrine does not delay or extend [the statute of limitations]"; (2) finding that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and timely against defendants not subject to the tolling agreement if they accrued after February 6, 2016; and (3) dismissing the complaint as against defendant Ivanka Trump on statute of limitations grounds, finding that she was not an employee of the Trump Organization at the time at which the parties entered into the tolling agreement. People v Trump, 217 AD3d 609 (1st Dept 2023).

The Appellate Division declined to dismiss *any* other defendants or *any* causes of action.

Discovery ended on July 28, 2023, and OAG filed a note of issue shortly thereafter. NYSCEF Doc. No. 644. OAG now moves for partial summary judgment on its first cause of action, for fraud under Executive Law § 63(12). NYSCEF Doc. No. 765. Separately, plaintiff now moves, pursuant to 22 NYCRR 130-1.1, to sanction defendants for frivolous motion practice. NYSCEF Doc. No. 1263. Defendants also move for summary judgment, seeking to dismiss the complaint in its entirety. NYSCEF Doc. No. 834.

Executive Law § 63(12)

Executive Law § 63(12) provides, as here pertinent, as follows:

> Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of section four hundred forty of the former penal law or section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper. The word "fraud" or "fraudulent" as used herein shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions. The term "persistent fraud" or "illegality" as used herein shall include continuance or carrying on of any fraudulent or illegal act or conduct. The term "repeated" as used herein shall include repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON ALL CAUSES OF ACTION

Arguments Defendants Raise Again

Standing and Capacity to Sue

Defendants' arguments that OAG has neither capacity nor standing to sue under Executive Law § 63(12), and that the disclaimers of non-party accountants Mazars insulate defendants, invoke the time-loop in the film "Groundhog Day." This Court emphatically rejected these arguments in its preliminary injunction decision and in its dismissal decision, and the First Department affirmed both. Defendants' contention that a different procedural posture mandates a reconsideration, or *a fortiori*, a reversal, is pure sophistry[1].

As this Court and others have made abundantly clear, "[i]t is not disputed that the Attorney General is empowered to sue for violations of [Executive Law § 63(12)]." People v Greenberg, 21 NY3d 439, 446 (2013) (finding Executive Law § 63(12) to be broadly worded anti-fraud device); People v Ford Motor Co., 74 NY2d 495, 502 (1989) ("Executive Law § 63(12) is the procedural route by which the Attorney-General may apply to Supreme Court for an order enjoining repeated illegal or fraudulent acts").

Parens Patriae and Consumer Ambit

Defendants repeat the erroneous argument that the complaint must be dismissed because OAG cannot demonstrate the requirements of a *parens patriae* action, which is one in the public interest. "*Parens patriae* is a common-law standing doctrine that permits the state to commence an action to protect a public interest, like the safety, health or welfare of its citizens." People v Grasso, 11 NY3d 64, 72 at n 4 (2008). Invocation of such doctrine, or its requirements, is not necessary where, as here, the New York legislature has specifically empowered the Attorney General to bring such an action pursuant to Executive Law § 63(12). People v Credit Suisse Sec. (USA) LLC, 31 NY3d 622, 633 (2018) ("it is undisputed that Executive Law § 63(12) gives the Attorney General standing to redress liabilities recognized elsewhere in the law, expanding the scope of available remedies"); People v Trump Entrepreneur Initiative LLC, 137 AD3d 409, 417 (1st Dept 2016) ("[E]ven apart from prevailing authority, the language of the statute itself appears to authorize a cause of action; like similar statutes that authorize causes of action, § 63(12) defines the fraudulent conduct that it prohibits, authorizes the Attorney General to commence an action or proceeding to foreclose that conduct, and specifies the relief, including equitable relief, that the Attorney General may seek").

In any event, even if compliance with the requirements of the *parens patriae* doctrine is necessary, which it is not, OAG has easily satisfied those requirements, as it is well-settled that "[i]n varying contexts, courts have held that a state has a quasi-sovereign interest in protecting the integrity of the marketplace." Grasso at 69 n 4; People v Coventry First LLC, 52 AD3d 345, 346 (1st Dept 2008) ("the claim pursuant to Executive Law § 63(12) constituted proper exercises

[1] Indeed, the Court made this crystal clear in its January 6, 2023 order when it found: "Here, the issues of capacity and standing, are pure issues of law and do not depend on a trial of disputed issues of fact. Simply put, who the instant parties are and what the law says, which determine capacity and standing, are not disputed issues of fact that need to be tried." NYSCEF Doc. No. 453 at 4.

of the State's regulation of businesses within its borders in the interest of securing an honest marketplace"); People v Amazon.com, Inc., 550 F Supp 3d 122, 130-131 (SD NY 2021) ("[T]he State's statutory interest under § 63(12) encompasses the prevention of either 'fraudulent or illegal' business activities. Misconduct that is illegal for reasons other than fraud still implicates the government's interests in guaranteeing a marketplace that adheres to standards of fairness...").

Defendants' rehashed argument that OAG's complaint must be dismissed because it is not designed to protect consumers is unavailing. New York v Feldman, 210 F Supp 2d 294, 299-300 (SD NY 2002) ("[D]efendants' claim that section 63(12) is limited to consumer protection actions is simply incorrect. The New York Attorney General has repeatedly used section 63(12) to secure relief for persons who are not consumers in cases that are not consumer protection actions").

Defendants cite to the trial court decision People v Domino's Pizza, Inc., NY Slip Op 30015(U) (Sup Ct, NY County 2021), which is not binding on this Court, as authority for the proposition that any relief sought here should come in the form of private contract litigation, not "a law enforcement action under a statute designed to address public harm." NYSCEF Doc. No. 835 at 39. However, Domino's is wholly distinguishable from the instant case. There, the Court found that "OAG did not establish that Domino's representations to franchisees... were false, deceptive, or misleading. Accordingly, the Court concludes that OAG has not established that Domino's engaged in conduct that 'tends to deceive or creates an atmosphere conducive to fraud.'" Domino's at 26[2]. Here, as discussed *infra*, OAG demonstrates that defendants repeatedly submitted fraudulent financial documents to obtain financial benefits which otherwise they would not have received.

Defendants glaringly misrepresent the requirements of an Executive Law § 63(12) cause of action. Citing to People v Northern Leasing Sys., Inc., 70 Misc 3d 256, 267 (Sup Ct, NY County 2021), defendants assert that OAG must show "the practice is one likely to mislead a reasonable consumer acting reasonably under the circumstances." NYSCEF Doc. No. 835 at 42. However, the word "consumer" does not appear anywhere in the referenced decision, and defendants' characterization of its holding is inaccurate[3]. Northern Leasing confirms that the "test for fraud under Executive Law § 63(12) is whether an act tends to deceive or creates an environment conducive to fraud." Northern Leasing at 267 (further holding "Executive Law § 63(12) expands fraud to encompass new liability, while including non-statutory fraud claims" and finding that "[a] claim under Executive Law § 63(12) is the exercise of 'the State's regulation of businesses within its borders in the interest of securing an honest marketplace'").

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[2] As the failure to demonstrate false misrepresentations foreclosed the possibility of liability on that issue in Domino's, any commentary about the statute's requirements was pure *dicta*.

[3] Although "consumer" does appear in the First Department's affirmance of Northern Leasing, it does not advance defendants' proposition that Executive Law § 63(12) actions be consumer oriented; it simply reaffirms that "the test for fraud is whether the targeted act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." 193 AD3d 67 (1st Dept 2021). The fact that Northern Leasing challenged actions targeted at consumers does not mean that Executive Law § 63(12) is restricted to such actions.

Non-Party Disclaimers

Defendants, yet again, argue that OAG's complaint must be dismissed because the SFCs contain language, provided by non-party accountants Mazars, that indicate that they have not audited or reviewed the accompanying financial statements and therefore cannot express an opinion as to whether the financial statements comply with Generally Accepted Accounting Principles ("GAAP"). However, as this Court already ruled, these non-party disclaimers do not insulate defendants from liability, as they plainly state that "Donald J. Trump is responsible for the preparation and fair presentation of the financial statement in accordance with accounting principles generally accepted in the United States of America and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the financial statement." NYSCEF Doc. No. 183.

As this Court explained in its November 3, 2022 Decision and Order: "[t]he law is abundantly clear that" using a disclaimer as a defense to a justifiable reliance claim requires proof that: "(1) the disclaimer is made sufficiently specific to the particular type of fact misrepresented or undisclosed; and (2) the alleged misrepresentations or omissions did not concern facts peculiarly within the [defendant's] knowledge." Basis Yield Alpha Fund (Master) v Goldman Sachs Grp., Inc., 115 AD3d 128, 137 (1st Dept 2014) ("a [plaintiff] may not be precluded from claiming reliance on misrepresentation of facts peculiarly within the [defendant's] knowledge"); People v Bull Inv. Grp., Inc., 46 AD2d 25, 29 (3d Dept 1974) ("It has been stated that '[t]he rule is clear that where one party to a transaction has superior knowledge, or means of knowledge not open to both parties alike, he is under a legal obligation to speak and his silence constitutes fraud"). As the SFCs did not particularize the type of fact misrepresented or undisclosed and were unquestionably based on information peculiarly within defendants' knowledge, defendants may not rely on such purported disclaimers as a defense.

In sum, the Mazars disclaimers put the onus for accuracy squarely on defendants' shoulders.

Scienter and "Participation" Requirements

Defendants erroneously claim that Fletcher v Dakota, Inc, 99 AD3d 43, 49 (1st Dept 2012), stands for the proposition that the purported "participation element [of a cause of action under Executive Law § 63(12)] is satisfied where the defendant 'directed, controlled, or ratified the decision that led to plaintiff's injury.'" However, Fletcher is not an Executive Law § 63(12) action, it was brought as a corporate tort; accordingly, is not relevant here.[4] Executive Law § 63(12) is much more than a mere codification of common law fraud.

Defendants also incorrectly rely on Abrahami v UPC Const. Co., 224 AD2d 231, 233 (1st Dept 1996), for the proposition that "[m]erely providing copies of purportedly false financial statements is insufficient." NYSCEF Doc. No. 835 at 55. However, as Abrahami was not brought pursuant to Executive Law § 63(12), its analysis regarding "intent to deceive" is irrelevant. Unlike the situation in Abrahami, where an action is brought pursuant to Executive

[4] In fact, had defendants not cut off the beginning of the sentence they cited, it would be evident on its face that such case is legally irrelevant, as the full sentence reads: "A leading treatise on corporations states that a director may be held individually liable to third parties for a corporate tort if he either participated in the tort or else 'directed, controlled, approved or ratified the decision that led to the plaintiff's injury.'" Fletcher at 49.

Law § 63(12), "good faith or lack of fraudulent intent is not in issue." People v Interstate Tractor Trailer Training, Inc., 66 Misc 2d 678, 682 (Sup Ct, NY County 1971) (holding liability under Executive Law § 63(12) does not require demonstrating an "intent to defraud"); Trump Entrepreneur Initiative at 417 ("fraud under section 63(12) may be established without proof of scienter or reliance"); Bull Inv. Grp. at 27 ("[i]t is well-settled that the definition of fraud under subdivision 12 of section 63 of the Executive Law is extremely broad and proof of scienter is not necessary").

Disgorgement of Profits

In flagrant disregard of prior orders of this Court *and* the First Department, defendants repeat the untenable notion that "disgorgement is unavailable as a matter of law" in Executive Law § 63(12) actions. NYSCEF Doc. No. 835 at 70. This is patently false, as defendants are, or certainly should be, aware that the Appellate Division, First Department made it clear *in this very case* that "[w]e have already held that the failure to allege losses does not require dismissal of a claim for disgorgement under Executive Law § 63(12)." Trump, 217 AD3d at 610.

Defendants nonetheless rely on the trial court decision in People v Direct Revenue, LLC, 19 Misc 3d 1124(A) (Sup Ct, NY County 2008), for the proposition that Executive Law § 63(12) "do[es] no[t] authorize the general disgorgement of profits received from sources other than the public." NYSCEF Doc. No. 835 at 71-72. However, defendants' neglect to mention that Direct Revenue was superseded, and essentially overruled, in 2016 by the New York Court of Appeals in People v Greenberg, which unequivocally held that "disgorgement is an available remedy under the Martin Act and the Executive Law." People v Greenberg, 27 NY3d 490, 497 (2016).

Also fatally flawed is defendants' reliance on People v Frink Am., Inc., 2 AD3d 1379, 1380 (4th Dept 2003), as it relies on the outdated proposition that Executive Law § 63(12) "does not create any new causes of action" and thus, the remedy of disgorgement is unavailable. NYSCEF Doc. No. 835 at 73-74. However, in Trump Entrepreneur Initiative, in which at least three of the instant defendants were parties, the First Department unambiguously declared that "the Attorney General is, in fact, authorized to bring a cause of action for fraud under Executive Law § 63(12)." Trump Entrepreneur Initiative at 418; see also People v Pharmacia Corp., 27 Misc 3d 368, 373 (Sup Ct, NY County 2010) (holding "Executive Law § 63(12) applies to fraudulent conduct actionable at common law, as well as to conduct for which liability arises solely from the statute").

Defendants incorrectly posit that, under People v Ernst & Young, LLP, 114 AD3d 569 (1st Dept 2014), disgorgement is available under the Martin Act but not under Executive Law § 63(12). NYSCEF Doc. No. 836 at 73. This is simply untrue. In Ernst & Young, the First Department specifically held that disgorgement was an available and potentially "crucial" remedy in an Executive Law § 63(12) action. Ernst & Young at 570.

Defendants correctly assert that "the record is devoid of any evidence of default, breach, late payment, or any complaint of harm" and argue that as none of the recipients of the subject SFCs ever lodged a complaint with OAG or otherwise claimed damages, disgorgement of profits would be inappropriate. NYSCEF Doc. No. 835 at 40.

However, that is completely irrelevant. As the Ernst & Young Court noted:

> [W]here, as here, there is a claim based on fraudulent activity, disgorgement may be available as an equitable remedy, notwithstanding the absence of loss to individuals or independent claims for restitution. Disgorgement is distinct from the remedy of restitution because it focuses on the gain to the wrongdoer as opposed to the loss to the victim. Thus, disgorgement aims to deter wrongdoing by preventing the wrongdoer from retaining ill-gotten gains from fraudulent conduct. Accordingly, the remedy of disgorgement does not require a showing or allegation of direct losses to consumers or the public; the source of the ill-gotten gains is "immaterial."

Id. (disgorgement is not impermissible penalty "since the wrongdoer who is deprived of an illicit gain is ideally left in the position he would have been had there been no misconduct") (internal citations omitted); see also Amazon.com at 130 ("Executive Law § 63(12) authorizes the Attorney General to seek injunctive and other relief", and finding "the Attorney General can seek disgorgement of profits on the State's behalf").

Sanctionable Conduct for Frivolous Motion Practice

In response to both OAG's request for a preliminary injunction and to defendants' motions to dismiss, this Court rejected every one of the aforementioned arguments. In rejecting such arguments for the second time, this Court cautioned that "sophisticated counsel should have known better." [5] NYSCEF Doc. No. 453 at 5. However, the Court declined to impose sanctions, believing it had "made its point." Id.

Apparently, the point was not received.

One would not know from reading defendants' papers that this Court has already *twice* ruled against these arguments, called them frivolous, and *twice* been affirmed by the First Department.

"In its discretion, a court may award costs and financial sanctions against an attorney or party resulting from frivolous conduct." Kamen v Diaz-Kamen, 40 AD3d 937, 937 (2d Dept 2007). See Yan v Klein, 35 AD3d 729, 729–30 (2d Dept 2006) ("The plaintiff, following two prior actions, has 'continued to press the same patently meritless claims,' most of which are now barred by the doctrines of res judicata and collateral estoppel").

Defendants' conduct in reiterating these frivolous arguments is egregious. We are way beyond the point of "sophisticated counsel should have known better"; we are at the point of intentional and blatant disregard of controlling authority and law of the case. This Court emphatically rejected these arguments, as did the First Department. Defendants' repetition of them here is indefensible.

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5 The Court even went so far as to caution that the "arguments were borderline frivolous even the first time defendants made them." NYSCEF Doc. No. 453 at 3.

Pursuant to New York Administrative Code § 130-1.1, "[t]he Court, as appropriate, may make such an award of costs or impose such financial sanctions against either an attorney or a party to the litigation or against both." The provision further states that:

> For purposes of this Part, conduct is frivolous if:
>
> (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
>
> (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
>
> (3) it asserts material factual statements that are false.

22 NYCRR 130-1.1(c). Defendants' inscrutable persistence in re-presenting these arguments clearly satisfies the first of these three possible criteria.

When considering imposing sanctions "[a]mong the factors [the court] is directed to consider is whether the conduct was continued when it became apparent, or should have become apparent, that the conduct was frivolous, or when such was brought to the attention of the parties or to counsel." Levy v Carol Mgmt. Corp., 260 AD2d 27, 34 (1st Dept 1999) (further finding that sanctions both "punish past conduct" and "they are goal oriented, in that they are useful in deterring future frivolous conduct").

In its January 6, 2023 Decision and Order, this Court warned defendants that their "reiteration of [these previously rejected arguments] scattered across five different motions to dismis[s] was frivolous." NYSCEF Doc. No. 453 at 3.

In a last-ditch attempt to stave off sanctions, defendants have submitted an affirmation by the Hon. Leonard B. Austin (ret.), who had a supremely distinguished judicial career, culminating in 12 years on the Appellate Division, Second Department. NYSCEF Doc. No. 1449. Justice Austin presents what is essentially a primer on the interplay between motions to dismiss and motions for summary judgment, and every point of law is valid.

However, it is wholly invalid as a reason for this Court to deny sanctions. First, legal arguments are for counsel to make, not for experts to submit. "The rule prohibiting experts from providing their legal opinions or conclusions is 'so well-established that it is often deemed a basic premise or assumption of evidence law—a kind of axiomatic principle.'" In re Initial Pub. Offering Sec. Litig., 174 F Supp 2d 61, 64 (SD NY 2001) (citing Thomas Baker, The Impropriety of Expert Witness Testimony on the Law, 40 U Kan LRev 325, 352 (1992) (precluding "expert affidavits" on the law); accord, Note, Expert Legal Testimony, 97 Harv LRev 797, 797 (1984) ("it remains black-letter law that expert legal testimony is not permissible"). Neither defendants nor Justice Austin has sought permission to file an amicus brief. In their own submissions, defendants have expounded on the law of capacity, standing, disclaimers, motions to dismiss, motions for summary judgment, and sanctions. The heft and prestige of a legal lion adds nothing.

More importantly, the subject affirmation utterly fails to fit the specific facts of this case into the general principles it enunciates. In many situations, discovery, and a complete record, and the reversal of the burden of proof, will turn the tide, requiring that a valid complaint be dismissed because there is no evidence to support it. But standing and capacity are legal questions, not factual issues. Crucially, while defendants have, by their own account, conducted extensive discovery and have created a complete record, they fail to point to a single fact that discovery has uncovered, let alone a single fact in the record, that changes the calculus of their denied and doomed capacity and standing arguments.

Capacity and standing are not esoteric concepts. Infants, legally declared incompetents, and persons under certain legal disabilities are not allowed to sue. The New York Attorney General is none of the above. If my sibling or neighbor is harmed, I do not have standing to sue for his or her injury. Citizens may not sue to prevent governmental actions unless they may suffer some personal harm. Executive Law § 63(12) was promulgated to give the Attorney General standing to sue on behalf of the people of New York to prevent or deter the precise type of fraud here at issue. Arguments to the contrary are risible.

Defendants' arguments that the factual record developed in discovery changed the landscape under which standing should be viewed is legally preposterous. The best that defendants could muster at oral argument was to contend (incorrectly) that plaintiff cannot sue because the subject transactions were between private entities, and nobody lost money. However, that is purely an argument on the merits, not an argument on standing. Taken to its logical extreme, absolutely any time a defendant denies liability, it could move to dismiss on the ground of lack of standing.

Exacerbating defendants' obstreperous conduct is their continued reliance on bogus arguments, in papers and oral argument. In defendants' world: rent regulated apartments are worth the same as unregulated apartments; restricted land is worth the same as unrestricted land; restrictions can evaporate into thin air; a disclaimer by one party casting responsibility on another party exonerates the other party's lies; the Attorney General of the State of New York does not have capacity to sue or standing to sue (never mind all those cases where the Attorney General has sued successfully) under a statute expressly designed to provide that right; all illegal acts are untimely if they stem from one untimely act; and square footage subjective.

That is a fantasy world, not the real world.

There is also a larger context to the sanctions issue. Several defendants are no strangers to sanctions and why courts are sometimes constrained to issue them. In the investigatory special proceeding this Court found Donald Trump in contempt of Court and sanctioned him $10,000 per day for failing to comply with his discovery obligations. This Court lifted the contempt after 11 days. The First Department affirmed the contempt and the fines. People v Trump, 213 AD3d 503, 504 (1st Dept 2023) ("[T]he financial sanction to compel compliance was a proper exercise of the court's discretionary power and was not excessive or otherwise improper, under the particular circumstances").

In Donald J. Trump v Hillary R. Clinton, 22-14102-CV-DMM, ("Order on Motion for Indicative Ruling") (filed September 15, 2023) (SD FL), Judge Donald M. Middlebrooks denied what in

New York legal parlance would be called "a motion to reargue," pursuant to which Donald Trump asked Judge Middlebrooks to vacate sanctions imposed on him and his legal team totaling close to one million dollars. Judge Middlebrooks wrote, on the first page thereof, that "Movants acted in bad faith in bringing this lawsuit and that this case exemplifies Mr. Trump's history of abusing the judicial process.[6]" Id.

Unfortunately, sanctions are the only way to impress upon defendants' attorneys the consequences of engaging in repetitive, frivolous motion practice after this Court, affirmed by the Appellate Division, expressly warned them against doing so. Boye v Rubin & Bailin, LLP, 152 AD3d 1, 11 (1st Dept 2017) ("sanctions serve to deter future frivolous conduct" and their "goals include preventing the waste of judicial resources, and deterring vexatious litigation and dilatory or malicious litigation tactics").

It is of no consequence whether the arguments were made at the direction of the clients or *sua sponte* by the attorneys; counsel are "ethically obligated to withdraw any baseless and false claims, if not upon [their] own review of the record, certainly by the time [the] Supreme Court advised [them] of this fact." Boye at 11 (upholding sanctions against attorneys because "counsel continued to... pursue claims which were completely without merit in law or fact."); see also Nachbaur v Am. Transit Ins. Co., 300 AD2d 74, 75 (1st Dept 2002) (motion court properly sanctioned attorneys for "repetitive and meritless motions"); Leventritt v Eckstein, 206 AD2d 313, 314 (1st Dept 1994) (affirming sanctions imposed on attorney for "repeated pattern of frivolous conduct"); William Stockler & Co. v Heller, 189 AD2d 601, 603 (1st Dept 1993) (affirming sanctions against attorney upon finding "there was no factual or legal basis for defendant's original cross motion, or for the reargument motion, that both motions were 'totally frivolous' and were submitted 'just really to delay'"). Counsel should be the first line of defense against frivolous litigation.

Accordingly, this Court grants OAG's motion for sanctions, in part, to the extent of sanctioning each of defendants' attorneys who signed their names to the instant legal briefs[7], in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Order.

Arguments Defendants Raise for the First Time

Summary Judgment Standard

To prevail on its motion for summary judgment on all causes of action, defendants must first "make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient

[6] One factor Judge Middlebrooks considered was Donald Trump's "disregard for legal principles and precedent." Id. at 14. In short, Donald Trump, and his lawyers, are not sanctions neophytes. This is not their first rodeo.

[7] The following attorneys signed their names to defendants' instant briefs and are, accordingly, sanctioned $7,500 each: Michael Madaio, Esq. (Habba Madaio & Associates, LLP); Clifford S. Robert, Esq. (Robert & Robert PLLC); Michael Farina Esq. (Robert & Robert PLLC); Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC); and Armen Morian (Morian Law PLLC).

evidence to eliminate any material issues of fact from the case." Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 (1985). "Failure [of the movant] to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers." Id. If the defendants make out their prima facie showing, the burden then shifts to plaintiff to offer evidence sufficient to rebut that showing by identifying disputed issues of fact that should go before a trier of fact.

Defendants strenuously argue throughout their briefs that OAG has not met her burden sufficient to defeat defendants' motion for summary judgment. However, defendants misstate the black letter law applicable to summary judgment, citing to City Dental Servs., P.C. v New York Cent. Mut., 34 Misc 3d 127(A) (App Term 2d, 11th, 13th Jud Dists 2011) for the flatly wrong proposition that "in order to defeat summary judgment on these claims of predicate illegality, the NYAG must, with respect to each predicate illegality attached, 'establish[] each element of its cause with respect to those causes of action.'" NYSCEF Doc. No. 835 at 62.

Not only does City Dental not stand for that proposition (it merely found that under the circumstances of that case, plaintiff's evidence failed to meet her burden on summary judgment), but the law is well-settled that "to defeat a motion for summary judgment the opposing party must 'show facts sufficient to require a trial of any issue of fact," not make out its own case. Zuckerman v City of New York, 49 NY2d 557, 562 (1980). While OAG must establish each and every element of its cause(s) of action in order to *prevail* on its own motion for summary judgment, in order to defeat defendants' motion for summary judgment (provided defendants are able to demonstrate a prima facie case) "an opposing party must 'show facts sufficient to require a trial of any issue of fact.'" Guzman v Strab Const. Corp., 228 AD2d 645, 646 (2d Dept 1996) ("evidentiary facts derived from the documents submitted [in opposition to summary judgment motion] are sufficient to present a triable issue of fact").

The "Worthless Clause"

Defendants rely on what they call a "worthless clause" set forth in the SFCs under the section entitled "Basis of Presentation" that reads, as here pertinent, as follows:

> Assets are stated at their estimated current values and liabilities at their estimated current amounts using various valuation methods. Such valuation methods include, but are not limited to, the use of appraisals, capitalization of anticipated earnings, recent sales and offers, and estimates of current values as determined by Mr. Trump in conjunction with his associates and, in some instances, outside professionals. Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates presented herein are not necessarily indicative of the amount that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts.

NYSCEF Doc. Nos. 769 at 7; 770 at 7; 771 at 7; 772 at 7; 773 at 7.

In his sworn deposition, Donald Trump spent a lot of time invoking this clause: "Well, they call it a 'disclaimer.' They call it 'worthless clause' too, because it makes the statement 'worthless.'" NYSCEF Doc. No. 859 at 67. Donald Trump goes on to say that "I have a clause in there that says, don't believe the statement, go out and do your own work. This statement is 'worthless.' It means nothing." Id. at 68. Furthermore, Donald Trump implies that he did not consider it important to review the SFCs for accuracy because of the existence of this purported "worthless clause":

> OAG: Does this refresh your recollection of the process whereby you would get final review of the Statement of Financial Condition?
>
> DJT: Yeah, I think generally. It's interesting. I would say as years went by, I got less and less and then once I became President, I would – if I saw it at all, I'd see it, you know, after it was already done.
>
> OAG: So in the period –
>
> DJT: Again, you know, I hate to be boring and tell you this. When you have the worthless clause on a piece of paper and the first – literally the first page you're reading about how this is a worthless statement from the standpoint of your using it as a bank or whatever –whoever may be using it, you tend not to get overly excited about it. I think it had very little impact, if any impact on the banks.
>
> ....
>
> OAG: So am I understanding that you didn't particularly care about what was in the Statement of Financial Condition?
>
> DJT: I didn't get involved in it very much. I felt it was a meaningless document, other than it was almost a list of my properties, with good faith effort of people trying to put some value down. It was a good faith effort.

Id. at 107-108. Defendants further submit the affidavit and deposition transcript of Robert Unell, who purports to be an expert in commercial real estate, for the proposition that because of "the worthless clause" in the SFC, "no lender relies on these for what it is." NYSCEF Doc. Nos. 1030 at 183-184; 1031.

However, defendants' reliance on these "worthless" disclaimers is worthless. The clause does not use the words "worthless" or "useless" or "ignore" or "disregard" or any similar words. It does not say, "the values herein are what I think the properties will be worth in ten or more years." Indeed, the quoted language uses the word "current" no less than five times, and the word "future" zero times.

Additionally, as discussed *supra*, a defendant may not rely on a disclaimer for misrepresentation of facts peculiarly within the defendant's knowledge. Basis Yield Alpha Fund at 136. Here, as the valuations of the subject properties are, obviously, peculiarly within defendants' knowledge, their reliance on them is to no avail.

Furthermore, "[t]his 'special facts doctrine' applies *regardless of the level of sophistication of the parties*." TIAA Glob. Invs. LLC v One Astoria Square LLC, 127 AD3d 75, 87 (1st Dept 2015) (emphasis added) (holding disclaimer does not bar liability for fraud where facts were peculiarly within disclaiming party's knowledge).

Thus, the "worthless clause" does not say what defendants say it says, does not rise to the level of an enforceable disclaimer, and cannot be used to insulate fraud as to facts peculiarly within defendants' knowledge, even vis-à-vis sophisticated recipients.

The Tolling Agreement

The First Department has declared that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and claims against defendants not subject to the tolling agreement are timely if they accrued after February 6, 2016. Trump, 217 AD3d at 611. Defendants concede that the tolling agreement binds each of the LLC-defendants and the Trump Organization. However, they argue that each of the individual defendants and the Donald J. Trump Revocable Trust (the "DJT Revocable Trust") are not bound by the agreement.

Alan Garten, the Trump Organization's Chief Legal Officer, originally entered into the tolling agreement on behalf of "the Trump Organization" on August 27, 2021; the agreement was extended one time by an amendment dated May 3, 2022. NYSCEF Doc. No. 1260. It tolls the statute of limitations for the period from November 5, 2020, through May 31, 2022. Id. at 2. The agreement contains a footnote to the entity "the Trump Organization" that reads as follows:

> As noted in the December 7, 2019 subpoena issued in this investigation to the Trump Organization, the "Trump Organization" as used herein includes The Trump Organization, Inc; DJT Holdings LLC; DJT Holdings Managing Member LLC; and any predecessors, successors, present or former parents, subsidiaries, and affiliates, whether direct or indirect; and all directors, officers, partners, employees, agents, contractors, consultants, representatives, and attorneys of the foregoing, and any other Persons associated with or acting on behalf of the foregoing, or acting on behalf of any predecessors, successors, or affiliates of the foregoing.

Id. at 4 n 1.

Thus, the tolling agreement at issue here binds "all directors [and] officers" and "present or former parents" of the Trump Organization and its affiliates and subsidiaries. Id. It is undisputed that at the time the tolling agreement was executed, each individual defendant, Donald J. Trump, Donald Trump Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney,

were all directors and/or officers of the Trump Organization. NYSCEF Doc. No. 1293 at ¶¶ 673, 680, 696, 710, 736.

Defendants argue that the non-signatory defendants are not bound by the agreement, citing Highland Crusader Offshore Partners, L.P. v Targeted Delivery Techs. Holdings, Ltd., 184 AD3d 116, 121 (1st Dept 2020), for the "general principal that only the parties to a contract are bound by its terms." NYSCEF Doc. No. 835 at 27. However, defendants fail to quote the following sentence, which provides that "[a] non-signatory may be bound by a contract under certain limited circumstances." Highland at 122. See also Oberon Sec., LLC v Titanic Ent. Holdings LLC, 198 AD3d 602, 603 (1st Dept 2021) (non-signatory companies bound by agreement with language defining signatory to include "all subsidiaries, affiliates, [and] successors").

In People v JUUL Labs, Inc., 212 AD3d 414, 417 (1st Dept 2023), in a case involving nearly identical language in a corporate tolling agreement[8], the First Department recently held that non-signatory corporate affiliates, officers, and directors were bound by the agreement. Similarly, here all the individual defendants are bound by the instant tolling agreement's terms and may be held liable for any claims that accrued after July 13, 2014.

Defendants argue that OAG is judicially estopped from asserting that the agreement binds the individual defendants based on statements OAG's counsel made during oral argument in the investigatory special proceeding. NYSCEF Doc. No. 1292 at 26. Specifically, on April 25, 2022, while seeking to hold Donald Trump in contempt for failing to comply with court orders, OAG's counsel stated: "[t]here is hard prejudice because Donald Trump is not a party to the tolling agreement, that tolling agreement only applies to the Trump Organization." NYSCEF Doc. No. 1041 at 59.

For judicial estoppel to be applicable: "First, the party against whom the estoppel is asserted must have argued an inconsistent position in a prior proceeding; and second, the prior inconsistent position must have been adopted by the court in some manner." Bates v Long Island R. Co., 997 F2d 1028, 1038 (2d Cir 1993).

Defendants are correct that the first prong is satisfied, in that the statements OAG's counsel made during oral argument are inconsistent with the position OAG is now taking. However, defendants cannot demonstrate that this Court adopted the prior position. Indeed, this Court did not need to, and did not, consider the tolling agreement when it issued its April 26, 2022 Decision and Order finding Donald Trump in contempt. See Ghatani v AGH Realty, LLC, 181 AD3d 909, 911 (2d Dept 2020) ("For the doctrine [of judicial estoppel] to apply, there must be a final determination endorsing the party's inconsistent position in the prior proceeding").

This Court has not addressed the tolling agreement until now. Accordingly, defendants cannot demonstrate that this Court adopted OAG's prior inconsistent position.

[8] The substantially similar tolling agreement at issue in Juul can be found under Index No. 452168/2019, NYSCEF Doc. No. 176.

Moreover, "[t]he party asserting estoppel must show with respect to himself: '(1) lack of knowledge of the true facts; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change in his position.'" BWA Corp. v Alltrans Exp. U.S.A., Inc., 112 AD2d 850, 853 (1st Dept 1985). Here, none of the defendants claim that they changed their positions or courses of conduct in reliance upon the statement of OAG's counsel during oral argument.

Finally, while judicial estoppel may be applied to prohibit inconsistent changes in factual positions, courts have declined to extend the doctrine to changes in legal positions. Seneca Nation of Indians v New York, 26 F Supp 2d 555, 565 (WD NY 1998), affd, 178 F3d 95 (2d Cir 1999) (finding "[t]here is no legal authority" for "broadening of the doctrine" to "include seemingly inconsistent legal positions"). Who physically signed the agreement is a question of fact; whom it binds is a question of law.

Defendants' argument that the DJT Revocable Trust is not bound by the tolling agreement falls flat. In his deposition, Donald Trump affirmed under oath that the assets of the Trump Organization are held in the DJT Revocable Trust, for which he is the sole donor and beneficiary. NYSCEF Doc. No. 859 at 21. Donald Trump also affirmed that at the time the trust was formed, he was the sole trustee and remained the sole trustee until 2017, when defendants Allen Weisselberg and Donald Trump, Jr. became the sole trustees. Id. at 20-24.

As every beneficiary, donor, and trustee of the DJT Revocable Trust is a defendant bound by the tolling agreement, and as the trust is unquestionably a "parent" of the Trump Organization, so too does the tolling agreement bind the DJT Revocable Trust. See People v Leasing Expenses Co. LLC, 199 AD3d 521, 522 (1st Dept 2021) ("It may likewise be inferred that the trustees had knowledge of the activities of the businesses they controlled through the trust mechanism. Hence, under Executive Law § 63(12), the family trusts and trustees may likewise be held liable for the fraud"); see e.g., Kurzman v Graham, 12 Misc 3d 586, 590 (Sup Ct, NY County 2006) ("courts will not allow the owner of assets to evade creditors by placing the property in a trust while retaining a right to revoke the trust").

Defendants cite to New York Estates, Powers and Trust Law § 11-1.1(b)(17) for the proposition that only a trustee may bind a trust to an agreement. However, § 11-1.1(b)(17) does not state this; rather, it states:

> (b) In the absence of contrary or limiting provisions in the court order or decree appointing a fiduciary, or in a subsequent order or decree, or in the will, deed or other instrument, every fiduciary is authorized:
>
> ...
>
> (17) To execute and deliver agreements, assignments, bills of sale, contracts, deeds, notes, receipts and any other instrument necessary or appropriate for the administration of the estate or trust.

This provision simply says what a fiduciary is permitted to do in the absence of a contrary provision. It does nothing to advance defendants' argument that *only* a trustee may bind a trust,

particularly since defendants fail to cite to any provision of the DJT Revocable Trust restricting who can bind it, as § 11-1.1(b)(17) anticipates.

Moreover, Korn v Korn, 206 AD3d 529, 530 (1st Dept 2022), upon which defendants inexplicably rely, is irrelevant to the instant analysis, as that case involved an examination by the court as to whether a fiduciary had a right or duty to negotiate on behalf of an estate pursuant to § 11-1.1(b)(13), not pursuant to § 11-1.1(b)(17), to which defendants cite.

Finally, "the Attorney General should not be limited, in [her] duty to protect the public interest, by an... agreement [s]he did not join." People v Coventry First LLC, 13 NY3d 108, 114 (2009) (holding Attorney General not bound by arbitration agreement when pursuing Executive Law § 63(12) claim and finding "[s]uch an arrangement between private parties cannot alter the Attorney General's statutory role or the remedies that [s]he is empowered to seek").

The tolling agreement was a mutually beneficial and common arrangement pursuant to which OAG agreed to hold off suing, and Alan Garten, on behalf of the Trump Organization, agreed to toll the statute of limitations. All defendants received the benefit of the bargain; OAG held off suing. OAG is entitled to its benefit of the bargain, the tolling of the statute of limitations, for the limited agreed-upon time, as against anyone it could have sued for the matters at issue at the time at which the agreement was executed. OAG clearly did not intend to permit defendants' principals to evade the tolling agreement based on a technicality contrary to the spirit of the agreement and controlling caselaw.

Statute of Limitations

As a general rule, statutes of limitation start running when a claim accrues, that is, when it can be sued upon. In arguing that OAG's causes of action are untimely, defendants incorrectly assert that the statute of limitations starts running on the date the parties entered into the subject agreements, or when the loans closed. However, the First Department did not use the word "closed," it used the word "completed." Trump, 217 AD3d at 611. Obviously, the transactions were not "completed" while the defendants were still obligated to, and did, annually submit current SFCs to comply with the terms of the loan agreements.

Defendants further assert that any continuing documentation provided after the agreements were entered into, or when the loans closed, is of no consequence if the proceeds were distributed prior to July 2014. NYSCEF Doc. No. 835 at 18. This argument is unavailing. As OAG asserts, each submission of an SFC after July 13, 2014, constituted a separate fraudulent act. Indeed, each submission of a financial document to a third-party lender or insurer would "requir[e] a separate exercise of judgment and authority," triggering a new claim. Yin Shin Leung Charitable Found. v Seng, 177 AD3d 463, 464 (1st Dept 2019) (finding continuous series of wrongs each of which gave rise to its own claim).

Defendants mistakenly assert that if a loan agreement was entered into and its proceeds were dispersed prior to the applicable statute of limitations, then a claim arising out of submitting any subsequent contractually required financial documentation is also untimely, irrespective of when that documentation is submitted. Defendants would have this Court apply a bizarre, invented, inverted form of the "relation back" doctrine, pursuant to which if one aspect of fraudulent

business conduct falls outside the statute of limitations, then all subsequent aspects of fraudulent conduct also fall outside the statute, no matter how inextricably intertwined.

Of course, this is contrary to controlling case law, which holds that a cause of action accrues at the time "when one misrepresents a material fact." Graubard Mollen Dannett & Horowitz v Moskovitz, 86 NY2d 112, 12 (1995). Moreover, even the plain language of Executive Law § 63(12) states: "[t]he term 'repeated' as used herein shall include repetition of any *separate and distinct fraudulent or illegal act*" (emphasis added). Clearly, the submission of each separate fraudulent SFC is a distinct fraudulent act.

OAG is not challenging the loans, the closings, or the disbursements; it is challenging defendants' submissions of financial documents containing false and misleading information. Thus, any SFC that was submitted after July 13, 2014, falls within the applicable statute of limitations. CW Capital Cobalt VR Ltd. v CW Capital Invs., LLC, 195 AD3d 12, 19-20 (1st Dept 2021) (each instance of wrongful conduct a "separate, actionable wrong" giving "rise to a new claim").

Materiality

It is settled that a standalone cause of action under Executive Law § 63(12) does not require a demonstration of materiality but merely that an "act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." People v Gen. Elec. Co., 302 AD2d 314, 314-315 (1st Dept 2003) (holding that, unlike GBL § 349, plaintiff need not prove "the challenged act or practice 'was misleading in a material way'").

Although the Domino's court found that "evidence regarding falsity, materiality, reliance and causation plainly is *relevant* to determining whether the Attorney General has established that the challenged conduct has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud" (Domino's at 11), every Appellate Division and the New York Court of Appeals now hold that materiality and scienter are not requirements for liability under § 63(12).

However, as discussed *infra*, although materiality is required under the second through seventh causes of action, it is not required under a standalone cause of action under Executive Law § 63(12), the OAG's first cause of action.

Defendants argue that the SFCs were not materially misleading, claiming, *inter alia* that: (1) "[t]here is no such thing as objective value"; (2) "a substantial difference between valuation in the SOFCs and appraisal, per se, is not evidence of inflated values"; (3) there is nothing improper about using "fixed assets" valuations as opposed to using the current market valuation approach; and (4) it was proper to include "internally developed intangibles, such as the brand premium used in the valuation of President Trump's golf clubs, in personal financial statements." NYSCEF Doc No. 1292 at 20-23.

Thus, defendants essentially argue that value is inherently subjective; that because internal brand valuations are in the eye of the beholder (here, Donald Trump), they cannot be overvalued. Defendants argue that "[n]o bank or underwriter would have reasonably been materially misled by the alleged misstatements or omissions in the SOFCs and other information the Defendants

made available to their counterparties because no sophisticated counterparty would have considered the SOFCs and other information provided by the Defendants alone as material to extend credit or set an interest rate, or issue an insurance policy or price a risk, without doing their own due diligence." NYSCEF Doc. No. 835 at 45.

Defendants also argue: "[i]t follows that if the user [of the SFCs] is in possession of the correct information, then the financial statements are not materially misstated." Id. at 39. Defendants' stance is, practically speaking, that they may submit false SFCs so long as the recipients know, from their own due diligence, that the information is false.

Accepting defendants' premise would require ignoring decades of controlling authority holding that financial statements and real property valuations are to be judged objectively, not subjectively. FMC Corp. v Unmack, 92 NY2d 179, 191 (1998) ("*objectively* reasonable conclusion, drawn by a competent and experience appraiser, was based on credible evidence" that demonstrated "property was overvalued") (emphasis added); Assured Guar. Mun. Corp. v DLJ Mortg. Cap. Inc., 44 Misc 3d 1206(A) (Sup Ct, NY County 2014) ("Credit Suisse is reading this as a subjective standard, dependent on Assured's expectations. Credit Suisse is wrong. It is well settled that this is an objective standard").

Moreover, courts have long found that "generally, it is the 'market value' which provides the most reliable valuation for assessment purposes." Great Atl. & Pac. Tea Co. v Kiernan, 42 NY2d 236, 239 (1977); Consol. Edison Co. of New York v City of New York, 33 AD3d 915, 916 (2d Dept 2007) ("the standard for assessment remains market value"), affd 8 NY3d 591. Beauty may be in the eye of the beholder, but value is in the eye of the marketplace.

Further, defendants' assertion that the discrepancies between their valuations and the OAG's are immaterial is nonsense. What OAG has established, in many cases by clear, indisputable documentary evidence (as discussed *infra*), is not a matter of rounding errors or reasonable experts disagreeing. OAG has submitted conclusive evidence that between 2014 and 2021, defendants overvalued the assets reported in the SFCs between 17.27-38.51%; this amounts to a discrepancy of between $812 million and $2.2 billion dollars. NYSCEF Doc. No. 766 at 70. Even in the world of high finance, this Court cannot endorse a proposition that finds a misstatement of at least $812 million dollars to be "immaterial." Defendants have failed to identify any authority for the notion that discrepancies of the magnitude demonstrated here could be considered immaterial.

The Second through Seventh Causes of Action

The Second, Third, Fourth, Fifth, Sixth, and Seventh causes of action allege violations of Executive Law § 63(12) based on underlying violations of the New York Penal Law prohibiting falsification of business records, issuance of false financial statements, and insurance fraud.

Liability under New York Penal Law § 175.05 (falsifying business records in the second degree) requires that a person "[m]akes or causes a false entry in the business records of an enterprise."

Liability under New York Penal Law § 175.45 (issuing a false financial statement) requires that a person "represents in writing that a written instrument purporting to describe a person's financial

condition or ability to pay as of a prior date is accurate with respect to such person's current financial condition or ability to pay, whereas [that person] knows it is materially inaccurate in that respect."

Liability under New York Penal Law § 176.05 (insurance fraud) requires that a person submitted an application for insurance either: (1) knowing that it "contain[ed] materially false information concerning any fact material thereto"; or (2) "conceal[ed], for the purpose of misleading, information concerning any fact material thereto."

Accordingly, unlike a standalone cause of action under Executive Law § 63(12). the second through seventh causes of action require demonstrating some component of intent and materiality. People v Alamo Rent A Car, Inc., 174 Misc 2d 501, 505 (Sup Ct, NY County 1997) ("As in all other situations requiring *mens rea*, however, petitioners may prove, by reference to facts and circumstances surrounding the case, that respondents knew that their conduct was unlawful. Moreover, petitioners need not prove respondents acted with an 'evil motive, bad purpose or corrupt design'") (internal citations omitted).

OAG has demonstrated that there remain, at the very least, disputed issues of fact as to whether defendants violated these statutes, intentionally and materially. Thus, there are issues of fact as to causes of action two through seven that require a trial.

The Court has considered defendants' remaining arguments and finds them to be unavailing and/or non-dispositive.

Accordingly, defendants' motion for summary judgment dismissing every cause of action is denied in its entirety.

OAG'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ITS FIRST CAUSE OF ACTION

Summary Judgment Burden on Standalone Executive Law § 63(12) Cause of Action

OAG moves for partial summary judgment, seeking to hold defendants liable under OAG's first cause of action, for fraud under Executive Law § 63(12).

As this Court has noted *ad nauseum*, Executive Law § 63(12) "authorizes the Attorney General to bring a special proceeding against any person or business that engages in repeated or persistent fraudulent or illegal conduct, while broadly construing the definition of fraud so as to include acts characterized as dishonest or misleading and eliminating the necessity for proof of an intent to defraud." People v Apple Health & Sports Club, Ltd., Inc., 206 AD2d 266-267 (1st Dept 1994).

As OAG's first cause of action, the only one upon which it moves for summary judgment, alleges a standalone violation of Executive Law § 63(12), OAG need only prove: (1) the SFCs were false and misleading; and (2) the defendants repeatedly or persistently used the SFCs to transact business.

This instant action is essentially a "documents case." As detailed *infra,* the documents here clearly contain fraudulent valuations that defendants used in business, satisfying OAG's burden to establish liability as a matter of law against defendants. Defendants' respond that: the documents do not say what they say; that there is no such thing as "objective" value; and that, essentially, the Court should not believe its own eyes.[9]

The defenses Donald Trump attempts to articulate in his sworn deposition are wholly without basis in law or fact. He claims that if the values of the property have gone up in the years since the SFCs were submitted, then the numbers were not inflated at that time (i.e.; "But you take the 2014 statement, if something is much more valuable now – or, I guess, we'll have to pick a date which was a little short of now. But if something is much more valuable now, then the number that I have down here is a low number"). NYSCEF Doc. No. 1363 at 69-75). He also seems to imply that the numbers cannot be inflated because he could find a "buyer from Saudi Arabia" to pay any price he suggests.[10] Id. at 30-33, 60-62, 79-80.

The Trump Tower Triplex

This Court takes judicial notice that the Trump Tower apartment in which Donald Trump resided for decades (the "Triplex") is 10,996 square feet. NYSCEF Doc. No. 816 at 2. Between 2012-2016, Donald Trump submitted SFCs falsely claiming that the Triplex was 30,000 square feet, resulting in an overvaluation of between $114-207 million dollars. NYSCEF Doc. Nos. 782 at Rows 833-834, 1028, 783 at Rows 799-800, 1199, 784 at Rows 843-844, 785 at Rows 882-883, 789 at Row 913, 817. The misrepresentation continued even after defendants received written notification from *Forbes* that Donald Trump had been overestimating the square footage of the Triplex by a factor of three.[11]

In opposition, defendants absurdly suggest that "the calculation of square footage is a subjective process that could lead to differing results or opinions based on the method employed to conduct the calculation.[12]" NYSCEF Doc. No. 1293 at 20. Well yes, perhaps, if the area is rounded or oddly shaped, it is possible measurements of square footage could come to slightly differing results due to user error. Good-faith measurements could vary by as much as 10-20%, not 200%.

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[9] As Chico Marx, playing Chicolini, says to Margaret Dumont, playing Mrs. Gloria Teasdale, in "Duck Soup," "well, who ya gonna believe, me or your own eyes?"

[10] This statement may suggest influence buying more than savvy investing.

[11] Three days after receiving a written inquiry from *Forbes*, Trump Organization Vice President, Amanda Miller, sent an email to Trump Organization Executive Vice President and Chief Legal Officer, Alan Garten, indicating that she "spoke to Allen W[eisselberg] re: [Trump World Tower and Trump Tower] – we are going to leave those alone." NYSCEF Doc. No. 821. Although OAG need not show intent to deceive under a standalone § 63(12) cause of action, this directive to continue to use a grossly inflated number despite clear knowledge it is false demonstrates the repetitive and ongoing nature of defendants' propensity to engage in fraud.

[12] Despite this assertion in their motion papers, counsel for defendants, Christopher Kise, Esq, conceded during oral argument held on September 22, 2023, that square footage is, in fact, an objective number.

A discrepancy of this order of magnitude, by a real estate developer sizing up his own living space of decades, can only be considered fraud.[13]

OAG unquestionably satisfies its two-prong burden of demonstrating the SFCs from 2012-2016 calculated the value of the Triplex based on a false and misleading square footage, and that some of the defendants repeatedly and persistently used the SFCs to transact business.

Seven Springs Estate

Defendant Seven Springs LLC owns over 200 acres of contiguous land in the towns of Bedford, New Castle and North Castle in Westchester County, New York.

In 2000, non-party the Royal Bank of Pennsylvania appraised the "as is" market value of Seven Springs to be $25 million if converted to residential development. NYSCEF Doc. No. 825. In 2006, the same bank performed a new appraisal, which showed Seven Springs had an "as is" market value of $30 million. NYSCEF Doc. No. 826.

In 2012, Seven Springs LLC received another appraisal that estimated a six-lot subdivision on the New Castle portion of the property to have a fair market value of approximately $700,000 per-lot. NYSCEF Doc. No. 829 at 203-206.

In July 2014, because the Trump Organization was considering donating a conservation easement, it retained Cushman & Wakefield to provide a "range of value" of the Seven Springs property. NYSCEF Doc. Nos. 830, 831. Cushman & Wakefield's appraiser, David McArdle, analyzed the sale of eight lots in Bedford, six lots in New Castle, and ten lots in North Castle and determined the fair market value for all 24 lots was approximately $30 million. NYSCEF Doc. No. 831, 832.

Notwithstanding receiving market values from professional appraisals in 2000, 2006, 2012, and 2014 valuing Seven Springs at or below $30 million, Donald Trump's 2011 SFC reported the value to be $261 million, and his 2012, 2013 and 2014 SFCs reported the value to be $291 million.[14] NYSCEF Doc. Nos. 769, 770, 771, 772.

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[13] In fact, OAG demonstrates that as of 2012, no apartment sold in New York City had ever approached the price at which defendants valued the Triplex, noting that the highest overall sale at that time was $88 million for a Central Park West penthouse. The SFCs valued the Triplex at a staggering $180,000,000-$327,000,000 for the years 2012-2016. NYSCEF Doc. No. 1 at ¶276.

[14] The statutes of limitations have run for all claims that accrued before July 13, 2014. However, although not actionable by themselves, evidence of fraud that predates July 13, 2014, may still be used as evidence in evaluating OAG's request for permanent injunctive relief, wherein the Court must determine whether there has been "a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d 490, 496-97 (2016) (detailing standard for permanent injunctive relief under Executive Law 63(12) and "reject[ing] defendants' arguments that the Attorney General must show irreparable harm in order to obtain a permanent injunction").

In early 2016, Cushman & Wakefield performed another appraisal of Seven Springs, which included the planned development, and determined that as of December 1, 2015, the entire parcel was worth $56.6 million. NYSCEF Doc. Nos. 824 at 9; 875; 876.

Even giving defendants the benefit of the $56.6 million figure as of December 1, 2015, the value submitted on Donald Trump's 2014 SFC was inflated by over 400%. Accordingly, OAG has demonstrated liability for the false 2014 SFC for fraudulently inflating the value of Seven Springs.

Trump Park Avenue

Trump Park Avenue is a residential building included as an asset on Donald Trump's SFCs for the years 2011-2021. NYSCEF Doc. Nos. 769-779. In 2011, 12 of the unsold residential condominium units were subject to New York City's rent regulation laws. NYSCEF Doc. No. 948 at 3. By 2014, nine units remained subject to rent restrictions. NYSCEF Doc. No. 966. By 2020, six units remained subject to rent restrictions. NYSCEF Doc. No. 971.

A 2010 appraisal performed by the Oxford Group valued the 12 rent-stabilized units at $750,000 total, or $62,500 per unit. NYSCEF Doc. No. 952. A 2020 appraisal performed by Newmark Knight Frank valued the six units that remained subject to stabilization at $22,800,090 total, or $3,800,315 per unit. NYSCEF Doc. No. 972.

Notwithstanding, for the years 2014-2021, the Trump Organization submitted SFCs that valued these rent-restricted units as if they were unencumbered, inflating the value of each unit between as much 700% (in 2014) and 64% (in 2021). NYSCEF Doc. Nos. 772-779.

In an unsuccessful attempt to rebut OAG's prima facie demonstration, defendants proffer that the units are not overvalued because "the rent-stabilized units have the potential at some point in the future to be converted into unencumbered (by rent stabilization) units."[15] NYSCEF Doc. No. 1292 at 57. They further concede that "[t]his is the assumption the owner made when assessing potential asset pricing or value." Id.

[15] As every New Yorker knows, rent regulated units may be passed on from one generation to the next in perpetuity.

However, the SFCs are required to state "current" values, not "someday, maybe" values. At the time defendants provided the subject SFCs to third parties they unquestionably falsely inflated the value of the units based on a false premise that they were unrestricted.[16]

40 Wall Street

The Trump Organization, through defendant 40 Wall Street LLC, owns a ground lease at 40 Wall Street and pays ground rent to the landowner.

In 2010, Cushman & Wakefield appraised the Trump Organization's interest in 40 Wall Street at $200 million. NYSCEF Doc. Nos. 878-79. Cushman & Wakefield appraised again in 2011 and 2012, reaching valuations of between $200 and $220 million. NYSCEF Doc. Nos. 881-82. The Trump Organization possessed and was familiar with these appraisals. NYSCEF Doc. Nos. 817 at 135-138; 883.

Despite these appraisals, the 2011 and 2012 SFCs valued the Trump Organization's interest in the property at $524.7 million and $527.2 million, respectively, an overvaluation of more than $300 million each year.[17] NYSCEF Doc. Nos. 769, 770.

In 2015, Cushman & Wakefield once again appraised the property, and valued it at $540 million.[18] NYSCEF Doc. No. 887. Notwithstanding this appraised value, the 2015 SFC listed the value of 40 Wall Street at $735.4 million.[19] NYSCEF Doc. No. 773.

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[16] Mazars accountant Donald Bender testified that when he asked Jeffrey McConney, "Do you have any other appraisals?", Jeffrey McConney stated "I have nothing else," demonstrating an intent to conceal or mislead the accountants. NYSCEF Doc. No. 1262 at 243.

Further, Patrick Birney, a Trump Organization employee working directly under Jeffrey McConney, conceded that the Trump Organization maintained a spreadsheet for day-to-day operations on the Trump Park Avenue offering plan that included both the offering plan prices *and* the current market values, but that the Trump Organization concealed its own actual market estimates from Mazars by omitting the market value column in its spreadsheet and providing Mazars with only the offering plan prices. NYSCEF Doc. No. 946.

[17] Although any liability arising out of the submission of the 2011 and 2012 SFCs is time barred; as previously discussed, these submissions may be considered as evidence in support of OAG's request for injunctive relief.

[18] OAG plausibly asserts that this $540 million is also inflated; however, for purposes of this motion, OAG does not dispute the number, and argues that, even if the Court were to accept defendants' number as accurate, the 2015 SFC was still materially false, as it stated the value as nearly $200 million more than the $540 million appraisal. NYSCEF Doc. No. 766 at n 7.

[19] An email exchange dated August 4, 2014, between Allen Weisselberg and his son, Jack Weisselberg, a Ladder Capital employee, discusses the 2015 $540 million Cushman & Wakefield appraisal. NYSCEF Doc. No. 888. Notwithstanding direct knowledge of it, the 2015 SFC valued 40 Wall Street at nearly $200 million more. NYSCEF Doc. No. 773.

Defendants assert that overvaluations of two hundred million dollars are immaterial, as the "NYAG has produced no evidence to suggest... that Ladder Capital would have been uncomfortable allowing President Trump to guarantee the 40 Wall Street Loan if his net worth was only $1.9 billion, as the NYAG contends." NYSCEF Doc. No. 835 at 48. They further emphasize that "Ladder Capital has received in excess of $40 million in interest and 40 Wall Street LLC has never defaulted under the Loan."[20] Id.

Defendants' argument misses the mark. As has been explained to defendants many times, in many legal proceedings, and in painstaking detail, "where, as here, there is a claim based on fraudulent activity [under Executive Law 63(12)], disgorgement may be available as an equitable remedy, *notwithstanding the absence of loss to individuals or independent claims for restitution.*" Ernst & Young at 569 (emphasis added). Accordingly, it is not significant that the banks made money (or did not lose money)[21], or that they would have done business with the Trump Organization notwithstanding. The law is clear that the only requirements for liability to attach under a standalone Executive Law § 63(12) cause of action are (1) a finding that the SFCs were false and misleading; and (2) that defendants repeatedly or persistently used the SFCs to conduct business.

Accordingly, OAG has demonstrated liability for the false valuation of 40 Wall Street in the 2015 SFC.

Mar-a-Lago

Donald Trump purchased Mar-a-Lago in 1985. In 1993, he sought, and obtained, permission from the Town of Palm Beach to turn the property into a social club (NYSCEF Doc. No. 900), and on August 10, 1993, he entered into a "Declaration of Use Agreement" by which he agreed "the use of Land shall be for a private social club" and that "[a]ny additional uses of the Land shall be subject to approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Landmarks Preservation Commission of the Town, the Architectural Review Commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or any agencies under the foregoing governmental authorities." NYSCEF Doc. No. 915.

In 1995, Donald Trump signed a "Deed of Conservation and Preservation Easement" in which he gave up his right to use Mar-a-Lago for any purpose other than as a social club (the "1995 Deed"). NYSCEF Doc. No. 901. In 2002, Donald Trump signed a "Deed of Development Rights." NYSCEF Doc. No. 902. As part of granting a conversation easement to the National

[20] The defendant borrowers did not default on any loans; but we only know that with hindsight. Markets are volatile, and borrowers come in all shapes and sizes. The next borrower, or the one after that, might default, and if its SFCs are false, the lender might unfairly be left holding the bag. This will distort the lending marketplace and deprive other potential borrowers of the opportunity to obtain loans and create wealth.

[21] The subject loans made the banks lots of money; but the fraudulent SFCs cost the banks lots of money. The less collateral for a loan, the riskier it is, and a first principal of loan accounting is that as risk rises, so do interest rates. Thus, accurate SFCs would have allowed the lenders to make even more money than they did.

Trust for Historic Preservation, Donald Trump agreed that "Trump intend[s] to forever extinguish [his] right to develop or use the Property for any purpose other than club use" (the "2002 Deed"). The 2002 Deed also specifically "limits changes to the Property including, without limitation, the division or subdivision of the Property for any purpose, including use as single family homes, the interior renovation of the mansion, which may be necessary and desirable for the sale of the Property as a single family residential estate, the construction of new buildings and the obstruction of open vistas." Id. In exchange for granting the easement, Mar-a-Lago was taxed at a significantly lower rate (the club rate) than it otherwise would have been (the private home rate). NYSCEF Doc. No. 903.

From 2011-2021, the Palm Beach County Assessor appraised the market value of Mar-a-Lago at between $18 million and $27.6 million. NYSCEF Doc. No. 905.

Notwithstanding, the SFCs' values do not reflect these land use restrictions. Donald Trump's SFCs for 2011-2021 value Mar-a-Lago at between $426,529,614 million and $612,110,496, an overvaluation of *at least 2,300%*, compared to the assessor's appraisal. NYSCEF Doc. Nos. 769-779.

In an attempt to rebut the OAG's demonstration, defendants rely on the opinion affidavit of Lawrence Moens, who they purport is "the most accomplished and knowledgeable ultra-high net worth real estate broker in Palm Beach, Florida."[22] Moens claims that "the SOFC were and are appropriate and indeed *conservative*." NYSCEF Doc. No. 1292 at 35-36 (emphasis added). The Moens' affidavit states in a conclusory fashion that because he believes "this unique property offers to an elite purchaser the unparalleled opportunity to own an exclusive and extensive family compound in the most desirable sections of Palm Beach... the valuations in the SOFC were reasonable and below my estimate for the market value of the property each year." NYSCEF Doc. No. 1435. Moreover, Moens opines that "[i]f Mar-A-Lago was available for sale, I am confident that in short order, I would be in a position to produce a ready, willing and able buyer who would have interest in securing the property for their personal use as a residence, or even, their own club." Id. at 29. Critically, Moens does not opine *at what price* he is "confident" he could find a buyer (although he opines separately, without relying on any objective evidence, that he believes that as of 2023 the property is worth $1.51 *billion*[23]).

It is well-settled that: "[w]here the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation, however, the opinion should be given no probative force and is insufficient to withstand summary judgment." Diaz v New York Downtown Hosp., 99 NY2d 542, 544 (2002); see also Gardner v Ethier, 173 AD2d 1002, 1003-4 (3d Dept 1991) ("the expert

[22] At oral argument, his domain of expertise was enlarged to nationwide status.

[23] In his sworn deposition, when asked "[w]ho were the dozen or so [qualified] buyers that you were referencing in your report, Lawrence Moens replied: "I could dream up anyone from Elon Musk to Bill Gates and everyone in between. Kings, emperors, heads of state. But with net worths in the multiple billions. I don't know how many people in the world have a net worth of more than $10 billion, but I think it's quite a number. There are a lot." NYSCEF Doc. No. 1428 at 184-185. Obviously, this Court cannot consider an "expert affidavit" that is based on unexplained and unsubstantiated "dream[s]."

affidavit is also inadmissible because it is conclusory and the views are apparently based to a great extent on hearsay statements from unspecified witnesses as well as upon speculations on the part of the expert"). Accordingly, defendants' reliance on the Moens affidavit is unpersuasive and certainly insufficient to rebut OAG's prima face case.

Defendants further imply that they may ignore the plain language of the 2002 Deed restrictions because they would likely be able to use the Florida judicial system to get out of their contractual requirements; they further assert that because they may successfully breach their contract in the future, they were not required to consider the restrictions of the 2002 Deed when valuing the property. NYSCEF Doc. 1292 at 48-51. This argument is wholly without merit. At the time in which the defendants submitted the SFCs, the restrictions were in effect, and any valuations represented to third-parties must have incorporated those restrictions; failure to do so is fraud. Assets values that disregard applicable legal restrictions are by definition materially false and misleading.

Accordingly, OAG has demonstrated liability for the false valuation of Mar-a-Lago as appears in the SFCs from 2014-2021.

Aberdeen

The Trump Organization owns a golf course located in Aberdeen, Scotland ("Aberdeen"). The value assigned to Aberdeen was comprised of two parts: a value for the golf course and a value for the development of the non-golf course property, the latter of which is the focus here. Developing any of the non-golf course property required that the local Scottish authorities approve any proposed plans.

From 2011-2014, Donald Trump's SFC reported that he had "received outline planning permission [from local Scottish authorities] in December 2008 for... a residential village consisting of 950 holiday homes and 500 single family residences and 36 golf villas." NYSCEF Doc. Nos. 769-776.

The Trump Organization had "outline planning permission" to build a total of 1,486 homes. Notwithstanding, the 2014-2018 SFCs valuations of Aberdeen assumed the Trump Organization had received approval to build 2,500 homes, despite never having received such approval. NYSCEF Doc. Nos. 772-776, 907.

Additionally, the approval of the 950 holiday homes and 36 golf villas came with severe restrictions on their use: they could be used solely as rental properties and could be rented for no more than 12 weeks in any calendar year. NYSCEF Doc. No. 908 at 13. The Trump Organization submitted financial documentation to the local Scottish authorities representing that these short-term rentals would not be profitable and therefore would not add any value to Aberdeen. NYSCEF Doc. Nos. 909 at 36, 910 at 7. Consequently, the only profitable development of Aberdeen would have been the 500 single family residences. In July 2017, non-party Ryden LLP, acting on behalf of the Trump Organization, prepared a development appraisal for Aberdeen wherein it assessed the profit from developing 557 homes and estimated profits in the range of £16,525,000-£18,546,000. NYSCEF Doc. No. 1231 at 10.

In May 2018, the Trump Organization applied to the Aberdeen City Council to reduce the scope of the development project to 550 dwellings, consisting of 500 private residences, 50 leisure/resorts units, and zero holiday homes (having determined they were not profitable). NYSCEF Doc. No. 911. In September 2019, the Aberdeen City Council approved the proposal for a reduction in the proposed development, but restricted the 50 leisure/resort units, as they had the holiday homes, to be "occupied on a holiday letting or fractional ownership basis only and for no other purposes whatsoever including use as a permanent residential unit... ." NYSCEF Doc. No. 907 at 7.

Notwithstanding, the 2019 SFC, finalized a month after the latest approval, derived a value based on the assumption that 2,035 private residential homes could be developed. Adjusting the values to reflect the permissible 500 private residences reduces the value of the Aberdeen undeveloped property as reflected in the 2019 SFC by £164,196.704. NYSCEF Doc. No. 777 at 16, 789 at Cells G561-619, 912.

Although defendants wholly fail to address Aberdeen in any of their three memos of law, in their response to OAG's statement of material facts, they state that "Defendants dispute the veracity of the appraisal because President Trump, as a land developer, took optimistic views of potential future value which is not contemplated in the appraisal, thereby undervaluing Trump Aberdeen." NYSCEF Doc. No. 1293 at 82-83. For all the reasons discussed *supra*, this defense fails.

Accordingly, OAG has demonstrated liability for the false valuation of Aberdeen as appears in the SFCs from 2014-2019.

US Golf Clubs

Donald Trump owns or leases a number of golf clubs across the United States and abroad that are included as assets on his SFCs. NYSCEF Doc. Nos. 769-779. The value for these golf clubs is provided in the aggregate in the SFCs, although supporting accounting spreadsheets evidence the breakdown of the values assigned to each club. NYSCEF Doc. Nos. 781-791.

The "Trump Brand Premium"

The evidence indicates that for the years 2013-2020, the SFCs relied on values that included a 15% or 30% "premium" based on the "Trump brand" for the following seven golf clubs: Trump National Golf Course ("TNGC") Jupiter, TNGC LA, TNGC Colts Neck, TNGC Philadelphia, TNGC DC, TNGC Charlotte, and TNGC Hudson Valley. NYSCEF Doc. Nos. 783-790. However, the SFCs for those years (and, indeed, all the years before this Court), also contained express language stating: "The goodwill attached to the Trump name has significant value that has *not* been reflected in the preparation of this financial statement." NYSCEF Doc. Nos. 769-779 (emphasis added). Accordingly, the SFCs "double dip," both purporting not to include a brand premium while simultaneously including one of 15% or 30%.

In opposition, defendants submit the affidavit of Eli Bartov, an accounting professor at New York University, who distinguishes between overall brand value and brand value ascribed to individual golf courses. His point, ensconced in numerous lines of academic jargon, seems to be that defendants said that they were eschewing the former and opting only for the latter. NYSCEF Doc. No. 1378 at 14-15. This is a red herring and factually incorrect. The SFCs

clearly state that they do not include a brand value for *any* of the properties included in the SFCs; indeed, the SFCs emphatically declare that "[t]he goodwill attached to the Trump name has significant financial value *that has not been reflected in the preparation of this financial statement.*" NYSCEF Doc. Nos. 769-779 (emphasis added). Perhaps Donald Trump could have ascribed a brand value to golf courses that he viewed as "special," but he was obligated to disclose those exceptions when he represented that the SFCs did not reflect his brand value.

TNGC Briarcliff and TNGC LA

The valuations of TNGC Briarcliff and TNGC LA were each comprised of a value for the golf course and a value for the undeveloped land. As the Trump Organization was considering donating a conservation easement over both properties, they had both properties appraised.

An April 2014 appraisal valued the golf club portion of TNGC Briarcliff at $16,500,000; later that same year, Donald Trump valued the golf club portion of TNGC Briarcliff at $73,430,217, *an inflation of more than 300%*, in his SFC. NYSCEF Doc. Nos. 923 at 147; 785 at Row 257. A 2015 appraisal valued the golf club portion of TNGC LA at $16,000,000 as of December 26, 2014; the 2015 SFC valued the golf club portion of TNGC LA at $56,615,895, *an inflation of more than 200%.* NYSCEF Doc. Nos. 924 at 151; 785 at Row 386.

In an attempt to rebut this strong showing of fraud, defendants argue that they were not obligated to use market value, but, instead, were permitted to use the "fixed assets" approach to valuation, pursuant to which defendants may "value" a property by aggregating the money spent to acquire and maintain a property. NYSCEF Doc. No. 1292. They further rely on the Bartov affidavit, which states, in wholly conclusory fashion that: "[t]he assertion that 'Using fixed assets approach does not present the golf clubs at their estimated current value because the approach ignores market conditions and the behavior of informed buyers and sellers' is unsubstantiated and false." NYSCEF Doc. No. 1378 at 29.

Bartov is incorrect. Each of the corresponding SFCs include representations that "[a]ssets are stated at their estimated current values..." NYSCEF Doc. Nos. 769-779.[24] Accordingly, it is false and misleading to use a fixed-assets evaluation, which is completely different. The price for which you purchase property is not necessarily the price for which you can sell it. The latter, not the former, matters to lenders who want adequate collateral.

The Membership Liabilities

As part of the purchase of several of the golf club properties, Donald Trump agreed to assume the obligation to pay back refundable non-interest-bearing long-term membership deposits. However, notwithstanding that these liabilities must be satisfied in the future, the SFCs from 2012-2021 value them at $0. NYSCEF Doc. Nos. 769-779. This is false; they are a liability in the millions of dollars.

[24] In their response to OAG's statement of material facts, defendants concede that "GAAP defines Estimated Current Value as 'the amount at which the item could be exchanged between a buyer and seller, each of whom is well informed and willing, and neither of whom is compelled to buy or sell." NYSCEF Doc No. 1293 at 17.

However, the SFCs all state: "The fact that Mr. Trump will have the use of these funds for that period without cost and that the source of repayment will most likely be a replacement membership has led him to value this liability at zero." See e.g., NYCSCEF Doc. No. 772.

Although it was false to report the membership liabilities as $0, it was not, under the circumstances, *misleading*, as the SFCs state that the reason for so doing. Accordingly, OAG cannot prevail on liability as a result of the failure to report the membership liabilities.

Yet, as discussed *supra*, OAG has demonstrated liability for submitting fraudulent SFCs in 2014-2020 that falsely value the aforementioned US Golf Clubs based on undisclosed brand premiums and failure to report "current" values.

Vornado Partnership Properties

Donald Trump has a 30% limited partnership interest with non-party Vornado Realty Trust in entities that own office buildings in New York City (at 1290 Avenue of the Americas, hereinafter "1290 AOA") and San Francisco at 555 California Street.

Cash/Liquid Classification

Donald Trump's 30% limited partnership stake does not permit him to use or withdraw funds held by the partnerships. NYSCEF Doc. Nos. 916, 917. Notwithstanding, Donald Trump and his trustees classified his 30% interest in the Vornado partnership as a liquid/cash asset on his SFCs for the years 2013-2021. NYSCEF Doc. No. 771-779. This was even though it is "undisputed" by defendants that Donald Trump does not have "the right to use or withdraw [these] funds." NYSCEF Doc. No. 1293 at ¶387-388.

Defendants assert that "[e]ven if the cash held in the partnership was misclassified and should have been reported elsewhere on the SOFCs as an asset (e.g., in the value of the partnership interest), it would not have inflated the total value of cash or President Trump's net worth reported on the SOFCs." NYSCEF Doc No. 1292 at 39.

This argument does not hold any water. Put simply, it was false and misleading for defendants to indicate that it had access to between $14,221,800 and $93,126,589 in liquid assets, sometimes nearly a third of the total cash it claimed, when in fact those assets were completely illiquid. NYSCEF Doc. No. 1293 ¶ 403.

The Appraisals

Cushman & Wakefield appraised the value of 1290 AOA at $2 billion as of November 1, 2012, and $2.3 billion as of November 1, 2016. NYSCEF Doc. No. 919 at 5-6.

However, Donald Trump's 2014 SFC calculated his 30% share based on a purported value of $3,078,338,462; his 2015 SFC was based on a purported value of $2,985,819,936; and his 2016 SFC was based on a purported value of $3,055,000,000. NYSCEF Doc. Nos. 784 at Rows 709-715, 785 at Rows 748-755, 785 at Rows 779-784. This resulted in overvaluations of Donald Trump's 30% interest in 1290 AOA of between $205-$233 million dollars for those years.

CBRE appraised 1290 AOA and determined its value at $2 billion as of October 7, 2021. NYSCEF Doc. No. 947. Nonetheless, the 2021 SFC was calculated based upon a purported value of $2,574,813,800, an overvaluation of Donald Trump's 30% share by $172 million dollars. NYSCEF Doc. No. 791 at Row 918.

The instant motions do not task this Court with determining which appraisals are the most accurate, which would present issues of fact.[25] Rather, time and time again, the Court is not comparing one appraisal to another; it is comparing an independent professional appraisal to a pie-in-the-sky dream of concocted potential.

Accordingly, OAG has demonstrated liability for submitting fraudulent SFCs overvaluing Donald Trump's interest in the Vornado partnership in 2014-2016 and 2021.

Licensing Deals

Each of Donald Trump's SFCs from 2011-2021 has an asset category entitled "Real Estate Licensing Deals," which the SFC represents is value derived from "associations with others for the purpose of developing and managing properties" and the "cash flow that is expected to be derived... from these associations as their potential is realized." NYSCEF Doc. Nos. 769-779. The SFCs further state that "[i]n preparing [these] assessment[s], Mr. Trump and his management considered only situations which have evolved to the point where signed arrangements with the other parties exist and fees and other compensation which he will earn are reasonably quantifiable." Id.

Despite this express language, the SFCs from 2014-2018 and 2020-2021 include valuations of intra-organization deals, all between entities under the Trump Organization umbrella, in this category of assets. NYSCEF Doc. Nos. 1014, 1018, 1019, 1021, 1023, 1024, 1062, 1063, 1064. It was flatly false and misleading to include values of deals between Trump Organization entities while expressly representing in the SFCs that such assets included only valuations derived from "association with others." Improperly including these intra-organization deals resulted in an overvaluation of up to $224 million in 2014, $110 million in 2015, $120 million in 2016, $113 million in 2017, $115 million in 2018, $97 million in 2020, and $106 million in 2021. Id.

OAG has demonstrated liability for the false and misleading valuation of intra-company licensing deals on the SFCs from 2014-2018 and 2020-2021.

The Other Loans

OAG has established that defendants submitted false SFCs after July 13, 2014, pursuant to their other loan commitments. Defendants submitted SFCs to Deutsche Bank as part of their contractual obligations arising out of three different loans: (1) a Chicago Loan, undertaken by 401 North Wabash Venture LLC; (2) a Doral Loan, undertaken by Trump Endeavor LLC; and (3) an Old Post Office Loan, undertaken by Trump Old Post Office LLC. Defendants certified the accuracy of these SFCs to Deutsche Bank for the years 2014-2019 and 2021[26] as part of their

[25] Nor is this Court asked to determine Donald Trump's total wealth.

[26] The gap for 2020 may have been due to the COVID-19 pandemic.

contractual obligations. NYSCEF Doc. Nos. 1097, 1098, 1099, 1100, 1102, 1104, 1106, 1124, 1126, 1155, 1156, 1157.

The Individual Defendants

OAG has demonstrated liability on behalf of all the named individual defendants: (1) **Donald Trump**, as each and every SFC was issued on behalf of "Donald J. Trump"; (2) **Donald Trump, Jr.**, who, along with Allen Weisselberg, certified the accuracy of the SFCs for 2016-2020, and who singlehandedly certified the accuracy of the 2021 SFC (NYSCEF Docs. No. 808-813); (3) **Eric Trump**, who is the listed source for the Seven Springs valuation in 2014,[27] and who signed several guarantor compliance certificates in 2020 and 2021 for Donald J. Trump (NYSCEF Doc. No. 802); (4) **Allen Weisselberg**, who certified the accuracy of the SFCs from 2014-2021 (NYSCEF Doc. Nos. 806-812); (5) and **Jeffrey McConney**, who led the process of preparing all the SFCs since the 1990s[28] (NYSCEF Doc. No. 822 at 52-68).

The Entity Defendants

It is settled law that "[a] parent corporation will not be held liable for the torts or obligations of a subsidiary *unless it can be shown that the parent exercised complete dominion and control over the subsidiary*." Potash v Port Auth. of New York & New Jersey, 279 AD2d 562, 562 (2d Dept 2001) (emphasis added). Here, it is undisputed that Donald Trump, through one corporate form or another, exercised complete control over the umbrella of entities operating in furtherance of, or on behalf of, "the Trump Organization."

Defendants do not dispute that DJT Holdings LLC and DJT Holdings Managing Member LLC are entities that sit at the top of the Trump Organization's organizational chart and together own many of the Trump-affiliated entities that comprise the Trump Organization. DJT Holdings Managing Member LLC owns 100% of the Trump Organization and DJT Holdings LLC owns 100% of the Trump Organization LLC. NYSCEF Doc. Nos. 4, 819 at ¶1.

Accordingly, OAG has established liability on behalf of all the named entity defendants: (1) **The Trump Organization Inc.**, **the Trump Organization LLC**, **DJT Holdings LLC**, and **DJT Holdings Managing Member LLC**, as each participated in the preparation, submission and certification of the SFCs after July 13, 2014 through the acts of the individual defendants as described *supra*; (2) the **DJT Revocable Trust**, as both Donald Trump Jr. and Allen Weisselberg certified the accuracy of the 2016-2019 SFCs in their capacities as "Trustee, the Donald J. Trump Revocable Trust dated April 7, 2014, as amended" (NYSCEF Doc. No. 808); (3) **Trump Endeavor LLC**, which was the borrower on the Doral Loan, for which SFCs were submitted after July 13, 2014; (4) **401 North Wabash Venture LLC**, which was the borrower on a loan for "Trump Chicago," under which SFCs were required to be (and were) submitted

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[27] Eric Trump also reaffirmed the SFCs accuracy on July 9, 2019. NYSCEF Doc. Nos. 782 at Row 679, 783 at Rows 638-40, 784 at Row 660, 1183.

[28] Jeffrey McConney acknowledged his personal role in preparing supporting data for Donald Trump's SFCs beginning in 2011, testifying that: "I assemble the documentation" and that he would send both supporting data spreadsheets and backup documentation to the accountants. He further conceded that the supporting data spreadsheets were referred to as "Jeff's supporting data" or "Jeff's supporting schedule." NYSCEF Doc. No. 822 at 40, 67-68, 212, 294.

after July 13, 2014; (5) **Trump Old Post Office LLC**, as it was the borrower on the "Old Post Office" loan, under which SFCs were required to be (and were) submitted after July 13, 2014; and **Seven Springs LLC**, the borrowing entity (as described *supra*) under which SFCs were required to be (and were) submitted after July 13, 2014.

Injunctive Relief

OAG has prevailed on liability on its first cause of action pursuant to Executive Law § 63(12) as against all defendants: Donald J. Trump; Donald Trump, Jr.; Eric Trump; Allen Weisselberg; Jeffrey McConney; the DJT Revocable Trust; the Trump Organization Inc; the Trump Organization LLC; DJT Holdings LLC; DJT Holdings Managing Member LLC; Trump Endeavor 12 LLC; 401 North Wabash Venture LLC; Trump Old Post Office LLC; 40 Wall Street LLC; and Seven Springs LLC.

If liability is established under Executive Law § 63(12), the statute itself provides that the attorney general may obtain "an order enjoining the continuance of such business activity or of any fraudulent or illegal acts... and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of ... section one hundred thirty of the general business law...."

"[T]he Attorney General may obtain permanent injunctive relief under... Executive Law § 63(12) upon a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d at 496-97 (further stating "[t]his is not a 'run of the mill' action for an injunction, but rather one authorized by remedial legislation, brought by the Attorney-General on behalf of the People of the State and for the purposes of preventing fraud and defeating exploitation") (internal citations omitted).

Having found, at the commencement of the action, that OAG had preliminarily demonstrated defendants' "propensity to engage in persistent fraud," this Court appointed the Hon. Barbara S. Jones (ret.) as an independent monitor "to ensure there is no further fraud or illegality that violates § 63(12) pending the final disposition of this action." NYSCEF Doc. No. 194. On August 3, 2023, Judge Jones reported as follows:

> [S]ince my appointment I have reviewed material financial and accounting information submitted by the Trump Organization. As part of my review, I have made preliminary observations regarding certain current financial disclosures with respect to the Trump Organization's reporting of financial information. Specifically, I have observed that information regarding certain material liabilities provided to lenders – such as intercompany loans between or among Trust entities and Donald J. Trump, certain of the Trust's contingent liabilities, as well as refundable golf club membership deposits—has been incomplete. The Trust also has not consistently provided all required annual and quarterly certifications attesting to the accuracy of certain financial statements.

> In addition, annual audited financial statements for certain entities, prepared by an external accounting firm, list depreciation expenses. However, interim internally prepared financial statements provided to third parties for these same entities inconsistently report depreciation expenses.

NYSCEF Doc. No. 647. Even with a preliminary injunction in place, and with an independent monitor overseeing their compliance, defendants have continued to disseminate false and misleading information while conducting business. This ongoing flouting of this Court's prior order, combined with the persistent nature of the false SFCs year after year, have demonstrated the necessity of canceling the certificates filed under GBL § 130, as the statute provides. People v Northern Leasing, 70 Misc 3d 256, 279-80 (Sup Ct, NY County 2020) (denying a trial on the petition and ordering the LLC respondents to dissolve upon a finding of persistent fraud under Executive Law § 63(12)).

Having prevailed on liability on a standalone Executive Law § 63(12) cause of action, the Attorney General is entitled to the first two prayers for relief sought in her complaint: (1) canceling any certificate filed under and by virtue of the provisions of New York General Business Law § 130 for all the entity defendants found liable, as well as any other entity controlled or beneficially owned by the individual defendants found liable herein, which and who participated in or benefitted from the foregoing fraudulent schemes; and (2) appointing an independent monitor to oversee compliance, financial reporting, valuations, and disclosures to lenders, insurers, and tax authorities at the Trump Organization. NYSCEF Doc. No. 1 at 213.

Remaining Issues to be Determined at Trial

Anything presented in the parties' moving papers that this Court has not ruled upon in this Decision and Order, including determinations on liability for the second through seventh causes of action, the amount of disgorgement of profits to which OAG is entitled, and determinations on the third through ninth prayers for relief sought by OAG in its complaint, presents disputed issues of fact that shall proceed to trial.

Conclusion

For the reasons stated herein, it is hereby

ORDERED that defendants' motion for summary judgment is denied; and it is further

ORDERED that plaintiff's motion for sanctions is granted in part, to the extent of sanctioning Michael Madaio, Esq. (Habba Madaio & Associates, LLP), Clifford S. Robert, Esq. (Robert & Robert PLLC), Michael Farina Esq. (Robert & Robert PLLC), Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC), and Armen Morian (Morian Law PLLC) in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Decision and Order; and it is further

ORDERED that plaintiff's motion for partial summary judgment on its first cause of action is granted in part, to the extent of finding defendants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, the DJT Revocable Trust, the Trump Organization Inc, the Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC to be liable as a matter of law for persistent violations of Executive Law § 63(12); and it is further

ORDERED that any certificates filed under and by virtue of GBL § 130 by any of the entity defendants or by any other entity controlled or beneficially owned by Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney are canceled; and it is further

ORDERED that within 10 days of the date of this order, the parties are directed to recommend the names of no more than three potential independent receivers to manage the dissolution of the canceled LLCs; and it is further

ORDERED that the Hon. Barbara S. Jones (ret.) shall continue to serve as an independent monitor of the Trump Organization until further Court order; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

9/26/2023
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[X]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

v.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

Defendants.

Index No: 452564/2022

Engoron, J.S.C.

AFFIRMATION OF SERVICE

Motion Seq. No. 028

PETER A. SWIFT, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms the following statements to be true under penalty of perjury:

1. I am an associate of the law firm of Habba Madaio & Associates, LLP, and am not a party to the above-captioned action.

2, On October 25, 2023, I served the within Notice of Appeal and Informational Statement, both dated October 25, 2023, together with a copy of the Decision and Order of the Supreme Court of the State of New York, New York County (Honorable Arthur F. Engoron, J.S.C.), dated September 26, 2023, with Notice of Entry, upon the following parties, at the addresses listed after each party's name, by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in official deposit under the exclusive care and custody of the United

States Postal Service within the State of New York:

Kevin C. Wallace, Esq.
Colleen K. Faherty, Esq.
Office of the New York State Attorney General
28 Liberty Street
New York, New York 10005
Counsel for Plaintiff

Christopher M. Kise, Esq.
(Admitted Pro Hac Vice)
Continental PLLC
101 North Monroe Street, Suite 750
Tallahassee, Florida 32301
Counsel for Defendants The Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

Clifford S. Robert, Esq.
Michael Farina, Esq.
Robert & Robert PLLC
526 RXR Plaza
Uniondale, New York 11556
Counsel for Donald Trump, Jr., and Eric Trump

Dated: New York, New York
October 25, 2023

Peter A. Swift

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

v.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

Defendants.

Habba Madaio & Associates, LLP,

Attorney for Defendants.

Index No: 452564/2022

Engoron, J.S.C.

NOTICE OF APPEAL

Motion Seq. No. 028

PLEASE TAKE NOTICE THAT, pursuant to CPLR §§ 5511 and 5515, Habba Madaio & Associates, LLP hereby appeals to the Appellate Division, First Department, from the Decision and Order on Motion by Hon. Arthur F. Engoron, J.S.C., dated September 26, 2023 (NYSCEF Doc. No. 1533), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on September 27, 2023, and served by Notice of Entry on September 27, 2023, which granted Plaintiff's motion for sanctions.

This appeal is taken from each and every part of the Order insofar as Habba Madaio & Associates, LLP is aggrieved. A copy of the Informational Statement pursuant to 22 NYCRR 1250.3(a) is attached hereto as Exhibit A.

Dated: New York, New York
October 25, 2023

Respectfully submitted,

ALINA HABBA
MICHAEL MADAIO
HABBA MADAIO &
ASSOCIATES LLP
112 West 34th Street,
17th & 18th Floors
New York, New York 10120
Phone: (908) 869-1188
Facsimile: (908) 450-1881
E-mail: ahabba@habbalaw.com
mmadaio@habbalaw.com
Attorneys Pro Se

EXHIBIT "A"

Supreme Court of the State of New York
Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

- against -

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC.,THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type

- ☒ Civil Action
- ☐ CPLR article 75 Arbitration
- ☐ Action Commenced under CPLR 214-g
- ☐ CPLR article 78 Proceeding
- ☐ Special Proceeding Other
- ☐ Habeas Corpus Proceeding

Filing Type

- ☒ Appeal
- ☐ Original Proceedings
  - ☐ CPLR Article 78
  - ☐ Eminent Domain
  - ☐ Labor Law 220 or 220-b
  - ☐ Public Officers Law § 36
  - ☐ Real Property Tax Law § 1278
- ☐ Transferred Proceeding
  - ☐ CPLR Article 78
  - ☐ Executive Law § 298
- ☐ CPLR 5704 Review

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

☐ Administrative Review	☒ Business Relationships	☒ Commercial	☐ Contracts
☐ Declaratory Judgment	☐ Domestic Relations	☐ Election Law	☐ Estate Matters
☐ Family Court	☐ Mortgage Foreclosure	☐ Miscellaneous	☐ Prisoner Discipline & Parole
☐ Real Property (other than foreclosure)	☒ Statutory	☐ Taxation	☐ Torts

Appeal

Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

☐ Amended Decree	☐ Determination	■ Order	☐ Resettled Order
☐ Amended Judgement	☐ Finding	☐ Order & Judgment	☐ Ruling
☐ Amended Order	☐ Interlocutory Decree	☐ Partial Decree	☐ Other (specify):
■ Decision	☐ Interlocutory Judgment	☐ Resettled Decree	
☐ Decree	☐ Judgment	☐ Resettled Judgment	

Court: Supreme Court	County: New York
Dated: 09/26/2023	Entered: 09/27/2023
Judge (name in full): Hon. Arthur F. Engoron	Index No.: 452564/2022
Stage: ■ Interlocutory ☐ Final ☐ Post-Final	Trial: ☐ Yes ■ No If Yes: ☐ Jury ☐ Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? ■ Yes ☐ No

If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

2023-04925

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: ☐ Order to Show Cause ☐ Notice of Petition ☐ Writ of Habeas Corpus	Date Filed:

Statute authorizing commencement of proceeding in the Appellate Division:

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court	County: Choose County
Judge (name in full):	Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Habba Madaio & Associates, LLP, appeals from the Decision and Order of Supreme Court, New York County (Hon. Arthur F. Engoron, J.S.C.), dated September 26, 2023 and entered by the Clerk of the Court on September 27, 2023, which granted Plaintiff's motions for sanctions.

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Whether Supreme Court committed errors of law and/or fact, abused its discretion, and/or acted in excess of its jurisdiction by, inter alia, granting Plaintiff's motion for sanctions against Habba Madaio & Associates, LLP in the amount of $7,500.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	PEOPLE OF THE STATE OF NEW YORK	Plaintiff	Respondent
2	DONALD J. TRUMP	Defendant	None
3	DONALD TRUMP, JR.	Defendant	None
4	ERIC TRUMP	Defendant	None
5	ALLEN WEISSELBERG	Defendant	None
6	JEFFREY MCCONNEY	Defendant	None
7	THE DONALD J. TRUMP REVOCABLE TRUST	Defendant	None
8	THE TRUMP ORGANIZATION, INC.	Defendant	None
9	THE TRUMP ORGANIZATION LLC	Defendant	None
10	DJT HOLDINGS LLC	Defendant	None
11	DJT HOLDINGS MANAGING MEMBER	Defendant	None
12	TRUMP ENDEAVOR 12 LLC	Defendant	None
13	401 NORTH WABASH VENTURE LLC	Defendant	None
14	TRUMP OLD POST OFFICE LLC	Defendant	None
15	40 WALL STREET LLC	Defendant	None
16	SEVEN SPRINGS LLC	Defendant	None
17	Habba Madaio & Associates, LLP	Petitioner	Appellant
18			
19			
20			

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Kevin C. Wallace, Esq. and Colleen K. Faherty, Esq., Office of the New York State Attorney General			
Address: 28 Liberty Street			
City: New York	**State:** New York	**Zip:** 10005	**Telephone No:** 212-416-6046
E-mail Address: kevin.wallace@ag.ny.gov; colleen.faherty@ag.ny.gov			
Attorney Type: ☐ Retained ☐ Assigned ■ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 1			
Attorney/Firm Name: Alina Habba, Esq. and Michael Madaio, Esq., Habba Madaio & Associates, LLP			
Address: 112 West 34th Street, 17th &18th Floors			
City: New York	**State:** New York	**Zip:** 10020	**Telephone No:** 908-869-1188
E-mail Address: ahabba@habbalw.com; mmadaio@habbalaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 2, 5-17			
Attorney/Firm Name: Christopher M. Kise, Esq., Continental PLLC			
Address: 101 North Monroe Street, Suite 750			
City: Tallahassee	**State:** Florida	**Zip:** 32301	**Telephone No:** 305-677-2707
E-mail Address: ckise@continentalpllc.com			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ■ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 7, 10-16			
Attorney/Firm Name: Clifford S. Robert, Esq. and Michael Farina, Esq., Robert & Robert PLLC			
Address: 526 RXR Plaza			
City: Uniondale	**State:** New York	**Zip:** 11556	**Telephone No:** 516-832-7000
E-mail Address: crobert@robertlaw.com; mfarina@robertlaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 3-4			
Attorney/Firm Name:			
Address:			
City:	**State:**	**Zip:**	**Telephone No:**
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			
Attorney/Firm Name:			
Address:			
City:	**State:**	**Zip:**	**Telephone No:**
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

-against-

DONALD J. TRUMP, *et al.*,

Defendants.

Index No. 452564/2022

NOTICE OF ENTRY

PLEASE TAKE NOTICE that annexed hereto is a true and correct copy of the Decision and Order of the Honorable Arthur F. Engoron, J.S.C. dated September 26, 2023, on Motion Sequence Numbers 027, 028, and 029 (NYSCEF Nos. 1531, 1532, 1533), filed and entered in the Office of the Clerk of the Supreme Court, New York County on the 27th day of September, 2023.

Dated: New York, New York
September 27, 2023

LETITIA JAMES
Attorney General of the State of New York

By: */s/ Colleen K Faherty*
Colleen K. Faherty
Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6046
colleen.faherty@ag.ny.gov

Attorney for the People of the State of New York

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON **PART** 37

Justice

----------X

INDEX NO. 452564/2022

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

MOTION DATES 08/30/2023, 08/30/2023, 09/05/2023

Plaintiff,

MOTION SEQ. NO. 026, 027, 028

- v -

DONALD J. TRUMP, DONALD TRUMP JR, ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

DECISION + ORDER ON MOTIONS

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 026) 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1292, 1293, 1294, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415,

1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1442, 1443, 1444, 1445, 1446, 1447

were read on this motion for PARTIAL SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 027) 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1474

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 028) 1263, 1264, 1265, 1276, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473

were read on this motion for SANCTIONS.

Upon the foregoing documents, it is hereby ordered that defendants' motion for summary judgment is denied, plaintiff's motion for partial summary judgment is granted in part, and plaintiff's motion for sanctions is granted in part, all as detailed herein.

This action arises out of a years-long investigation that plaintiff, the Office of the Attorney General of the State of New York ("OAG"), conducted into certain business practices that defendants engaged in from 2011 through 2021. OAG alleges that the individual and entity defendants committed repeated and persistent fraud by preparing, certifying, and submitting to lenders and insurers false and misleading financial statements, thus violating New York Executive Law § 63(12).

Procedural Background

In 2020, OAG commenced a special proceeding seeking to enforce a series of subpoenas against various named defendants and other persons and entities. This Court presided over that proceeding and issued several orders compelling compliance with OAG's subpoenas. See People v The Trump Org., Sup Ct, NY County, Index No. 541685/2020. During that proceeding, OAG and the Trump Organization entered into an agreement, which, broadly speaking, tolled the statute of limitations from November 5, 2020, through May 31, 2022. NYSCEF Doc. No. 1260.

On November 3, 2022, this Court found preliminarily that defendants had a propensity to engage in persistent fraud by submitting false and misleading Statements of Financial Condition ("SFCs") on behalf of defendant Donald J. Trump ("Donald Trump"). NYSCEF Doc. No. 183. Accordingly, the Court granted a preliminary injunction against any further fraud and appointed the Hon. Barbara S. Jones (ret.) as an independent monitor to oversee defendants' financial statements and significant asset transfers. NYSCEF Doc. Nos. 193 and 194.

Defendants moved to dismiss the complaint. In a Decision and Order dated January 6, 2023, this Court denied the motion. NYSCEF Doc. Nos. 453. Defendants appealed, resulting in a January 6, 2023 Order wherein the Appellate Division, First Department modified this Court's order to the extent of: (1) declaring that the "continuing wrong doctrine does not delay or extend [the statute of limitations]"; (2) finding that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and timely against defendants not subject to the tolling agreement if they accrued after February 6, 2016; and (3) dismissing the complaint as against defendant Ivanka Trump on statute of limitations grounds, finding that she was not an employee of the Trump Organization at the time at which the parties entered into the tolling agreement. People v Trump, 217 AD3d 609 (1st Dept 2023).

The Appellate Division declined to dismiss *any* other defendants or *any* causes of action.

Discovery ended on July 28, 2023, and OAG filed a note of issue shortly thereafter. NYSCEF Doc. No. 644. OAG now moves for partial summary judgment on its first cause of action, for fraud under Executive Law § 63(12). NYSCEF Doc. No. 765. Separately, plaintiff now moves, pursuant to 22 NYCRR 130-1.1, to sanction defendants for frivolous motion practice. NYSCEF Doc. No. 1263. Defendants also move for summary judgment, seeking to dismiss the complaint in its entirety. NYSCEF Doc. No. 834.

Executive Law § 63(12)

Executive Law § 63(12) provides, as here pertinent, as follows:

> Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of section four hundred forty of the former penal law or section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper. The word "fraud" or "fraudulent" as used herein shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions. The term "persistent fraud" or "illegality" as used herein shall include continuance or carrying on of any fraudulent or illegal act or conduct. The term "repeated" as used herein shall include repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON ALL CAUSES OF ACTION

Arguments Defendants Raise Again

Standing and Capacity to Sue

Defendants' arguments that OAG has neither capacity nor standing to sue under Executive Law § 63(12), and that the disclaimers of non-party accountants Mazars insulate defendants, invoke the time-loop in the film "Groundhog Day." This Court emphatically rejected these arguments in its preliminary injunction decision and in its dismissal decision, and the First Department affirmed both. Defendants' contention that a different procedural posture mandates a reconsideration, or *a fortiori*, a reversal, is pure sophistry[1].

As this Court and others have made abundantly clear, "[i]t is not disputed that the Attorney General is empowered to sue for violations of [Executive Law § 63(12)]." People v Greenberg, 21 NY3d 439, 446 (2013) (finding Executive Law § 63(12) to be broadly worded anti-fraud device); People v Ford Motor Co., 74 NY2d 495, 502 (1989) ("Executive Law § 63(12) is the procedural route by which the Attorney-General may apply to Supreme Court for an order enjoining repeated illegal or fraudulent acts").

Parens Patriae and Consumer Ambit

Defendants repeat the erroneous argument that the complaint must be dismissed because OAG cannot demonstrate the requirements of a *parens patriae* action, which is one in the public interest. "*Parens patriae* is a common-law standing doctrine that permits the state to commence an action to protect a public interest, like the safety, health or welfare of its citizens." People v Grasso, 11 NY3d 64, 72 at n 4 (2008). Invocation of such doctrine, or its requirements, is not necessary where, as here, the New York legislature has specifically empowered the Attorney General to bring such an action pursuant to Executive Law § 63(12). People v Credit Suisse Sec. (USA) LLC, 31 NY3d 622, 633 (2018) ("it is undisputed that Executive Law § 63(12) gives the Attorney General standing to redress liabilities recognized elsewhere in the law, expanding the scope of available remedies"); People v Trump Entrepreneur Initiative LLC, 137 AD3d 409, 417 (1st Dept 2016) ("[E]ven apart from prevailing authority, the language of the statute itself appears to authorize a cause of action; like similar statutes that authorize causes of action, § 63(12) defines the fraudulent conduct that it prohibits, authorizes the Attorney General to commence an action or proceeding to foreclose that conduct, and specifies the relief, including equitable relief, that the Attorney General may seek").

In any event, even if compliance with the requirements of the *parens patriae* doctrine is necessary, which it is not, OAG has easily satisfied those requirements, as it is well-settled that "[i]n varying contexts, courts have held that a state has a quasi-sovereign interest in protecting the integrity of the marketplace." Grasso at 69 n 4; People v Coventry First LLC, 52 AD3d 345, 346 (1st Dept 2008) ("the claim pursuant to Executive Law § 63(12) constituted proper exercises

[1] Indeed, the Court made this crystal clear in its January 6, 2023 order when it found: "Here, the issues of capacity and standing, are pure issues of law and do not depend on a trial of disputed issues of fact. Simply put, who the instant parties are and what the law says, which determine capacity and standing, are not disputed issues of fact that need to be tried." NYSCEF Doc. No. 453 at 4.

of the State's regulation of businesses within its borders in the interest of securing an honest marketplace"); People v Amazon.com, Inc., 550 F Supp 3d 122, 130-131 (SD NY 2021) ("[T]he State's statutory interest under § 63(12) encompasses the prevention of either 'fraudulent or illegal' business activities. Misconduct that is illegal for reasons other than fraud still implicates the government's interests in guaranteeing a marketplace that adheres to standards of fairness...").

Defendants' rehashed argument that OAG's complaint must be dismissed because it is not designed to protect consumers is unavailing. New York v Feldman, 210 F Supp 2d 294, 299-300 (SD NY 2002) ("[D]efendants' claim that section 63(12) is limited to consumer protection actions is simply incorrect. The New York Attorney General has repeatedly used section 63(12) to secure relief for persons who are not consumers in cases that are not consumer protection actions").

Defendants cite to the trial court decision People v Domino's Pizza, Inc., NY Slip Op 30015(U) (Sup Ct, NY County 2021), which is not binding on this Court, as authority for the proposition that any relief sought here should come in the form of private contract litigation, not "a law enforcement action under a statute designed to address public harm." NYSCEF Doc. No. 835 at 39. However, Domino's is wholly distinguishable from the instant case. There, the Court found that "OAG did not establish that Domino's representations to franchisees... were false, deceptive, or misleading. Accordingly, the Court concludes that OAG has not established that Domino's engaged in conduct that 'tends to deceive or creates an atmosphere conducive to fraud.'" Domino's at 26[2]. Here, as discussed *infra*, OAG demonstrates that defendants repeatedly submitted fraudulent financial documents to obtain financial benefits which otherwise they would not have received.

Defendants glaringly misrepresent the requirements of an Executive Law § 63(12) cause of action. Citing to People v Northern Leasing Sys., Inc., 70 Misc 3d 256, 267 (Sup Ct, NY County 2021), defendants assert that OAG must show "the practice is one likely to mislead a reasonable consumer acting reasonably under the circumstances." NYSCEF Doc. No. 835 at 42. However, the word "consumer" does not appear anywhere in the referenced decision, and defendants' characterization of its holding is inaccurate[3]. Northern Leasing confirms that the "test for fraud under Executive Law § 63(12) is whether an act tends to deceive or creates an environment conducive to fraud." Northern Leasing at 267 (further holding "Executive Law § 63(12) expands fraud to encompass new liability, while including non-statutory fraud claims" and finding that "[a] claim under Executive Law § 63(12) is the exercise of 'the State's regulation of businesses within its borders in the interest of securing an honest marketplace'").

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[2] As the failure to demonstrate false misrepresentations foreclosed the possibility of liability on that issue in Domino's, any commentary about the statute's requirements was pure *dicta*.

[3] Although "consumer" does appear in the First Department's affirmance of Northern Leasing, it does not advance defendants' proposition that Executive Law § 63(12) actions be consumer oriented; it simply reaffirms that "the test for fraud is whether the targeted act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." 193 AD3d 67 (1st Dept 2021). The fact that Northern Leasing challenged actions targeted at consumers does not mean that Executive Law § 63(12) is restricted to such actions.

Non-Party Disclaimers

Defendants, yet again, argue that OAG's complaint must be dismissed because the SFCs contain language, provided by non-party accountants Mazars, that indicate that they have not audited or reviewed the accompanying financial statements and therefore cannot express an opinion as to whether the financial statements comply with Generally Accepted Accounting Principles ("GAAP"). However, as this Court already ruled, these non-party disclaimers do not insulate defendants from liability, as they plainly state that "Donald J. Trump is responsible for the preparation and fair presentation of the financial statement in accordance with accounting principles generally accepted in the United States of America and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the financial statement." NYSCEF Doc. No. 183.

As this Court explained in its November 3, 2022 Decision and Order: "[t]he law is abundantly clear that" using a disclaimer as a defense to a justifiable reliance claim requires proof that: "(1) the disclaimer is made sufficiently specific to the particular type of fact misrepresented or undisclosed; and (2) the alleged misrepresentations or omissions did not concern facts peculiarly within the [defendant's] knowledge." Basis Yield Alpha Fund (Master) v Goldman Sachs Grp., Inc., 115 AD3d 128, 137 (1st Dept 2014) ("a [plaintiff] may not be precluded from claiming reliance on misrepresentation of facts peculiarly within the [defendant's] knowledge"); People v Bull Inv. Grp., Inc., 46 AD2d 25, 29 (3d Dept 1974) ("It has been stated that '[t]he rule is clear that where one party to a transaction has superior knowledge, or means of knowledge not open to both parties alike, he is under a legal obligation to speak and his silence constitutes fraud"). As the SFCs did not particularize the type of fact misrepresented or undisclosed and were unquestionably based on information peculiarly within defendants' knowledge, defendants may not rely on such purported disclaimers as a defense.

In sum, the Mazars disclaimers put the onus for accuracy squarely on defendants' shoulders.

Scienter and "Participation" Requirements

Defendants erroneously claim that Fletcher v Dakota, Inc, 99 AD3d 43, 49 (1st Dept 2012), stands for the proposition that the purported "participation element [of a cause of action under Executive Law § 63(12)] is satisfied where the defendant 'directed, controlled, or ratified the decision that led to plaintiff's injury.'" However, Fletcher is not an Executive Law § 63(12) action, it was brought as a corporate tort; accordingly, is not relevant here.[4] Executive Law § 63(12) is much more than a mere codification of common law fraud.

Defendants also incorrectly rely on Abrahami v UPC Const. Co., 224 AD2d 231, 233 (1st Dept 1996), for the proposition that "[m]erely providing copies of purportedly false financial statements is insufficient." NYSCEF Doc. No. 835 at 55. However, as Abrahami was not brought pursuant to Executive Law § 63(12), its analysis regarding "intent to deceive" is irrelevant. Unlike the situation in Abrahami, where an action is brought pursuant to Executive

[4] In fact, had defendants not cut off the beginning of the sentence they cited, it would be evident on its face that such case is legally irrelevant, as the full sentence reads: "A leading treatise on corporations states that a director may be held individually liable to third parties for a corporate tort if he either participated in the tort or else 'directed, controlled, approved or ratified the decision that led to the plaintiff's injury.'" Fletcher at 49.

Law § 63(12), "good faith or lack of fraudulent intent is not in issue." People v Interstate Tractor Trailer Training, Inc., 66 Misc 2d 678, 682 (Sup Ct, NY County 1971) (holding liability under Executive Law § 63(12) does not require demonstrating an "intent to defraud"); Trump Entrepreneur Initiative at 417 ("fraud under section 63(12) may be established without proof of scienter or reliance"); Bull Inv. Grp. at 27 ("[i]t is well-settled that the definition of fraud under subdivision 12 of section 63 of the Executive Law is extremely broad and proof of scienter is not necessary").

Disgorgement of Profits

In flagrant disregard of prior orders of this Court *and* the First Department, defendants repeat the untenable notion that "disgorgement is unavailable as a matter of law" in Executive Law § 63(12) actions. NYSCEF Doc. No. 835 at 70. This is patently false, as defendants are, or certainly should be, aware that the Appellate Division, First Department made it clear *in this very case* that "[w]e have already held that the failure to allege losses does not require dismissal of a claim for disgorgement under Executive Law § 63(12)." Trump, 217 AD3d at 610.

Defendants nonetheless rely on the trial court decision in People v Direct Revenue, LLC, 19 Misc 3d 1124(A) (Sup Ct, NY County 2008), for the proposition that Executive Law § 63(12) "do[es] no[t] authorize the general disgorgement of profits received from sources other than the public." NYSCEF Doc. No. 835 at 71-72. However, defendants' neglect to mention that Direct Revenue was superseded, and essentially overruled, in 2016 by the New York Court of Appeals in People v Greenberg, which unequivocally held that "disgorgement is an available remedy under the Martin Act and the Executive Law." People v Greenberg, 27 NY3d 490, 497 (2016).

Also fatally flawed is defendants' reliance on People v Frink Am., Inc., 2 AD3d 1379, 1380 (4th Dept 2003), as it relies on the outdated proposition that Executive Law § 63(12) "does not create any new causes of action" and thus, the remedy of disgorgement is unavailable. NYSCEF Doc. No. 835 at 73-74. However, in Trump Entrepreneur Initiative, in which at least three of the instant defendants were parties, the First Department unambiguously declared that "the Attorney General is, in fact, authorized to bring a cause of action for fraud under Executive Law § 63(12)." Trump Entrepreneur Initiative at 418; see also People v Pharmacia Corp., 27 Misc 3d 368, 373 (Sup Ct, NY County 2010) (holding "Executive Law § 63(12) applies to fraudulent conduct actionable at common law, as well as to conduct for which liability arises solely from the statute").

Defendants incorrectly posit that, under People v Ernst & Young, LLP, 114 AD3d 569 (1st Dept 2014), disgorgement is available under the Martin Act but not under Executive Law § 63(12). NYSCEF Doc. No. 836 at 73. This is simply untrue. In Ernst & Young, the First Department specifically held that disgorgement was an available and potentially "crucial" remedy in an Executive Law § 63(12) action. Ernst & Young at 570.

Defendants correctly assert that "the record is devoid of any evidence of default, breach, late payment, or any complaint of harm" and argue that as none of the recipients of the subject SFCs ever lodged a complaint with OAG or otherwise claimed damages, disgorgement of profits would be inappropriate. NYSCEF Doc. No. 835 at 40.

However, that is completely irrelevant. As the Ernst & Young Court noted:

> [W]here, as here, there is a claim based on fraudulent activity, disgorgement may be available as an equitable remedy, notwithstanding the absence of loss to individuals or independent claims for restitution. Disgorgement is distinct from the remedy of restitution because it focuses on the gain to the wrongdoer as opposed to the loss to the victim. Thus, disgorgement aims to deter wrongdoing by preventing the wrongdoer from retaining ill-gotten gains from fraudulent conduct. Accordingly, the remedy of disgorgement does not require a showing or allegation of direct losses to consumers or the public; the source of the ill-gotten gains is "immaterial."

Id. (disgorgement is not impermissible penalty "since the wrongdoer who is deprived of an illicit gain is ideally left in the position he would have been had there been no misconduct") (internal citations omitted); see also Amazon.com at 130 ("Executive Law § 63(12) authorizes the Attorney General to seek injunctive and other relief", and finding "the Attorney General can seek disgorgement of profits on the State's behalf").

Sanctionable Conduct for Frivolous Motion Practice

In response to both OAG's request for a preliminary injunction and to defendants' motions to dismiss, this Court rejected every one of the aforementioned arguments. In rejecting such arguments for the second time, this Court cautioned that "sophisticated counsel should have known better." [5] NYSCEF Doc. No. 453 at 5. However, the Court declined to impose sanctions, believing it had "made its point." Id.

Apparently, the point was not received.

One would not know from reading defendants' papers that this Court has already *twice* ruled against these arguments, called them frivolous, and *twice* been affirmed by the First Department.

"In its discretion, a court may award costs and financial sanctions against an attorney or party resulting from frivolous conduct." Kamen v Diaz-Kamen, 40 AD3d 937, 937 (2d Dept 2007). See Yan v Klein, 35 AD3d 729, 729–30 (2d Dept 2006) ("The plaintiff, following two prior actions, has 'continued to press the same patently meritless claims,' most of which are now barred by the doctrines of res judicata and collateral estoppel").

Defendants' conduct in reiterating these frivolous arguments is egregious. We are way beyond the point of "sophisticated counsel should have known better"; we are at the point of intentional and blatant disregard of controlling authority and law of the case. This Court emphatically rejected these arguments, as did the First Department. Defendants' repetition of them here is indefensible.

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5 The Court even went so far as to caution that the "arguments were borderline frivolous even the first time defendants made them." NYSCEF Doc. No. 453 at 3.

Pursuant to New York Administrative Code § 130-1.1, "[t]he Court, as appropriate, may make such an award of costs or impose such financial sanctions against either an attorney or a party to the litigation or against both." The provision further states that:

> For purposes of this Part, conduct is frivolous if:
>
> (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
>
> (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
>
> (3) it asserts material factual statements that are false.

22 NYCRR 130-1.1(c). Defendants' inscrutable persistence in re-presenting these arguments clearly satisfies the first of these three possible criteria.

When considering imposing sanctions "[a]mong the factors [the court] is directed to consider is whether the conduct was continued when it became apparent, or should have become apparent, that the conduct was frivolous, or when such was brought to the attention of the parties or to counsel." Levy v Carol Mgmt. Corp., 260 AD2d 27, 34 (1st Dept 1999) (further finding that sanctions both "punish past conduct" and "they are goal oriented, in that they are useful in deterring future frivolous conduct").

In its January 6, 2023 Decision and Order, this Court warned defendants that their "reiteration of [these previously rejected arguments] scattered across five different motions to dismis[s] was frivolous." NYSCEF Doc. No. 453 at 3.

In a last-ditch attempt to stave off sanctions, defendants have submitted an affirmation by the Hon. Leonard B. Austin (ret.), who had a supremely distinguished judicial career, culminating in 12 years on the Appellate Division, Second Department. NYSCEF Doc. No. 1449. Justice Austin presents what is essentially a primer on the interplay between motions to dismiss and motions for summary judgment, and every point of law is valid.

However, it is wholly invalid as a reason for this Court to deny sanctions. First, legal arguments are for counsel to make, not for experts to submit. "The rule prohibiting experts from providing their legal opinions or conclusions is 'so well-established that it is often deemed a basic premise or assumption of evidence law—a kind of axiomatic principle.'" In re Initial Pub. Offering Sec. Litig., 174 F Supp 2d 61, 64 (SD NY 2001) (citing Thomas Baker, The Impropriety of Expert Witness Testimony on the Law, 40 U Kan LRev 325, 352 (1992) (precluding "expert affidavits" on the law); accord, Note, Expert Legal Testimony, 97 Harv LRev 797, 797 (1984) ("it remains black-letter law that expert legal testimony is not permissible"). Neither defendants nor Justice Austin has sought permission to file an amicus brief. In their own submissions, defendants have expounded on the law of capacity, standing, disclaimers, motions to dismiss, motions for summary judgment, and sanctions. The heft and prestige of a legal lion adds nothing.

More importantly, the subject affirmation utterly fails to fit the specific facts of this case into the general principles it enunciates. In many situations, discovery, and a complete record, and the reversal of the burden of proof, will turn the tide, requiring that a valid complaint be dismissed because there is no evidence to support it. But standing and capacity are legal questions, not factual issues. Crucially, while defendants have, by their own account, conducted extensive discovery and have created a complete record, they fail to point to a single fact that discovery has uncovered, let alone a single fact in the record, that changes the calculus of their denied and doomed capacity and standing arguments.

Capacity and standing are not esoteric concepts. Infants, legally declared incompetents, and persons under certain legal disabilities are not allowed to sue. The New York Attorney General is none of the above. If my sibling or neighbor is harmed, I do not have standing to sue for his or her injury. Citizens may not sue to prevent governmental actions unless they may suffer some personal harm. Executive Law § 63(12) was promulgated to give the Attorney General standing to sue on behalf of the people of New York to prevent or deter the precise type of fraud here at issue. Arguments to the contrary are risible.

Defendants' arguments that the factual record developed in discovery changed the landscape under which standing should be viewed is legally preposterous. The best that defendants could muster at oral argument was to contend (incorrectly) that plaintiff cannot sue because the subject transactions were between private entities, and nobody lost money. However, that is purely an argument on the merits, not an argument on standing. Taken to its logical extreme, absolutely any time a defendant denies liability, it could move to dismiss on the ground of lack of standing.

Exacerbating defendants' obstreperous conduct is their continued reliance on bogus arguments, in papers and oral argument. In defendants' world: rent regulated apartments are worth the same as unregulated apartments; restricted land is worth the same as unrestricted land; restrictions can evaporate into thin air; a disclaimer by one party casting responsibility on another party exonerates the other party's lies; the Attorney General of the State of New York does not have capacity to sue or standing to sue (never mind all those cases where the Attorney General has sued successfully) under a statute expressly designed to provide that right; all illegal acts are untimely if they stem from one untimely act; and square footage subjective.

That is a fantasy world, not the real world.

There is also a larger context to the sanctions issue. Several defendants are no strangers to sanctions and why courts are sometimes constrained to issue them. In the investigatory special proceeding this Court found Donald Trump in contempt of Court and sanctioned him $10,000 per day for failing to comply with his discovery obligations. This Court lifted the contempt after 11 days. The First Department affirmed the contempt and the fines. People v Trump, 213 AD3d 503, 504 (1st Dept 2023) ("[T]he financial sanction to compel compliance was a proper exercise of the court's discretionary power and was not excessive or otherwise improper, under the particular circumstances").

In Donald J. Trump v Hillary R. Clinton, 22-14102-CV-DMM, ("Order on Motion for Indicative Ruling") (filed September 15, 2023) (SD FL), Judge Donald M. Middlebrooks denied what in

New York legal parlance would be called "a motion to reargue," pursuant to which Donald Trump asked Judge Middlebrooks to vacate sanctions imposed on him and his legal team totaling close to one million dollars. Judge Middlebrooks wrote, on the first page thereof, that "Movants acted in bad faith in bringing this lawsuit and that this case exemplifies Mr. Trump's history of abusing the judicial process.[6]" Id.

Unfortunately, sanctions are the only way to impress upon defendants' attorneys the consequences of engaging in repetitive, frivolous motion practice after this Court, affirmed by the Appellate Division, expressly warned them against doing so. Boye v Rubin & Bailin, LLP, 152 AD3d 1, 11 (1st Dept 2017) ("sanctions serve to deter future frivolous conduct" and their "goals include preventing the waste of judicial resources, and deterring vexatious litigation and dilatory or malicious litigation tactics").

It is of no consequence whether the arguments were made at the direction of the clients or *sua sponte* by the attorneys; counsel are "ethically obligated to withdraw any baseless and false claims, if not upon [their] own review of the record, certainly by the time [the] Supreme Court advised [them] of this fact." Boye at 11 (upholding sanctions against attorneys because "counsel continued to... pursue claims which were completely without merit in law or fact."); see also Nachbaur v Am. Transit Ins. Co., 300 AD2d 74, 75 (1st Dept 2002) (motion court properly sanctioned attorneys for "repetitive and meritless motions"); Leventritt v Eckstein, 206 AD2d 313, 314 (1st Dept 1994) (affirming sanctions imposed on attorney for "repeated pattern of frivolous conduct"); William Stockler & Co. v Heller, 189 AD2d 601, 603 (1st Dept 1993) (affirming sanctions against attorney upon finding "there was no factual or legal basis for defendant's original cross motion, or for the reargument motion, that both motions were 'totally frivolous' and were submitted 'just really to delay'"). Counsel should be the first line of defense against frivolous litigation.

Accordingly, this Court grants OAG's motion for sanctions, in part, to the extent of sanctioning each of defendants' attorneys who signed their names to the instant legal briefs[7], in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Order.

Arguments Defendants Raise for the First Time

Summary Judgment Standard

To prevail on its motion for summary judgment on all causes of action, defendants must first "make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient

[6] One factor Judge Middlebrooks considered was Donald Trump's "disregard for legal principles and precedent." Id. at 14. In short, Donald Trump, and his lawyers, are not sanctions neophytes. This is not their first rodeo.

[7] The following attorneys signed their names to defendants' instant briefs and are, accordingly, sanctioned $7,500 each: Michael Madaio, Esq. (Habba Madaio & Associates, LLP); Clifford S. Robert, Esq. (Robert & Robert PLLC); Michael Farina Esq. (Robert & Robert PLLC); Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC); and Armen Morian (Morian Law PLLC).

evidence to eliminate any material issues of fact from the case." Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 (1985). "Failure [of the movant] to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers." Id. If the defendants make out their prima facie showing, the burden then shifts to plaintiff to offer evidence sufficient to rebut that showing by identifying disputed issues of fact that should go before a trier of fact.

Defendants strenuously argue throughout their briefs that OAG has not met her burden sufficient to defeat defendants' motion for summary judgment. However, defendants misstate the black letter law applicable to summary judgment, citing to City Dental Servs., P.C. v New York Cent. Mut., 34 Misc 3d 127(A) (App Term 2d, 11th, 13th Jud Dists 2011) for the flatly wrong proposition that "in order to defeat summary judgment on these claims of predicate illegality, the NYAG must, with respect to each predicate illegality attached, 'establish[] each element of its cause with respect to those causes of action.'" NYSCEF Doc. No. 835 at 62.

Not only does City Dental not stand for that proposition (it merely found that under the circumstances of that case, plaintiff's evidence failed to meet her burden on summary judgment), but the law is well-settled that "to defeat a motion for summary judgment the opposing party must 'show facts sufficient to require a trial of any issue of fact," not make out its own case. Zuckerman v City of New York, 49 NY2d 557, 562 (1980). While OAG must establish each and every element of its cause(s) of action in order to *prevail* on its own motion for summary judgment, in order to defeat defendants' motion for summary judgment (provided defendants are able to demonstrate a prima facie case) "an opposing party must 'show facts sufficient to require a trial of any issue of fact.'" Guzman v Strab Const. Corp., 228 AD2d 645, 646 (2d Dept 1996) ("evidentiary facts derived from the documents submitted [in opposition to summary judgment motion] are sufficient to present a triable issue of fact").

The "Worthless Clause"

Defendants rely on what they call a "worthless clause" set forth in the SFCs under the section entitled "Basis of Presentation" that reads, as here pertinent, as follows:

> Assets are stated at their estimated current values and liabilities at their estimated current amounts using various valuation methods. Such valuation methods include, but are not limited to, the use of appraisals, capitalization of anticipated earnings, recent sales and offers, and estimates of current values as determined by Mr. Trump in conjunction with his associates and, in some instances, outside professionals. Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates presented herein are not necessarily indicative of the amount that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts.

NYSCEF Doc. Nos. 769 at 7; 770 at 7; 771 at 7; 772 at 7; 773 at 7.

In his sworn deposition, Donald Trump spent a lot of time invoking this clause: "Well, they call it a 'disclaimer.' They call it 'worthless clause' too, because it makes the statement 'worthless.'" NYSCEF Doc. No. 859 at 67. Donald Trump goes on to say that "I have a clause in there that says, don't believe the statement, go out and do your own work. This statement is 'worthless.' It means nothing." Id. at 68. Furthermore, Donald Trump implies that he did not consider it important to review the SFCs for accuracy because of the existence of this purported "worthless clause":

> OAG: Does this refresh your recollection of the process whereby you would get final review of the Statement of Financial Condition?
>
> DJT: Yeah, I think generally. It's interesting. I would say as years went by, I got less and less and then once I became President, I would – if I saw it at all, I'd see it, you know, after it was already done.
>
> OAG: So in the period –
>
> DJT: Again, you know, I hate to be boring and tell you this. When you have the worthless clause on a piece of paper and the first – literally the first page you're reading about how this is a worthless statement from the standpoint of your using it as a bank or whatever –whoever may be using it, you tend not to get overly excited about it. I think it had very little impact, if any impact on the banks.
>
> ....
>
> OAG: So am I understanding that you didn't particularly care about what was in the Statement of Financial Condition?
>
> DJT: I didn't get involved in it very much. I felt it was a meaningless document, other than it was almost a list of my properties, with good faith effort of people trying to put some value down. It was a good faith effort.

Id. at 107-108. Defendants further submit the affidavit and deposition transcript of Robert Unell, who purports to be an expert in commercial real estate, for the proposition that because of "the worthless clause" in the SFC, "no lender relies on these for what it is." NYSCEF Doc. Nos. 1030 at 183-184; 1031.

However, defendants' reliance on these "worthless" disclaimers is worthless. The clause does not use the words "worthless" or "useless" or "ignore" or "disregard" or any similar words. It does not say, "the values herein are what I think the properties will be worth in ten or more years." Indeed, the quoted language uses the word "current" no less than five times, and the word "future" zero times.

Additionally, as discussed *supra*, a defendant may not rely on a disclaimer for misrepresentation of facts peculiarly within the defendant's knowledge. Basis Yield Alpha Fund at 136. Here, as the valuations of the subject properties are, obviously, peculiarly within defendants' knowledge, their reliance on them is to no avail.

Furthermore, "[t]his 'special facts doctrine' applies *regardless of the level of sophistication of the parties*." TIAA Glob. Invs. LLC v One Astoria Square LLC, 127 AD3d 75, 87 (1st Dept 2015) (emphasis added) (holding disclaimer does not bar liability for fraud where facts were peculiarly within disclaiming party's knowledge).

Thus, the "worthless clause" does not say what defendants say it says, does not rise to the level of an enforceable disclaimer, and cannot be used to insulate fraud as to facts peculiarly within defendants' knowledge, even vis-à-vis sophisticated recipients.

The Tolling Agreement

The First Department has declared that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and claims against defendants not subject to the tolling agreement are timely if they accrued after February 6, 2016. Trump, 217 AD3d at 611. Defendants concede that the tolling agreement binds each of the LLC-defendants and the Trump Organization. However, they argue that each of the individual defendants and the Donald J. Trump Revocable Trust (the "DJT Revocable Trust") are not bound by the agreement.

Alan Garten, the Trump Organization's Chief Legal Officer, originally entered into the tolling agreement on behalf of "the Trump Organization" on August 27, 2021; the agreement was extended one time by an amendment dated May 3, 2022. NYSCEF Doc. No. 1260. It tolls the statute of limitations for the period from November 5, 2020, through May 31, 2022. Id. at 2. The agreement contains a footnote to the entity "the Trump Organization" that reads as follows:

> As noted in the December 7, 2019 subpoena issued in this investigation to the Trump Organization, the "Trump Organization" as used herein includes The Trump Organization, Inc; DJT Holdings LLC; DJT Holdings Managing Member LLC; and any predecessors, successors, present or former parents, subsidiaries, and affiliates, whether direct or indirect; and all directors, officers, partners, employees, agents, contractors, consultants, representatives, and attorneys of the foregoing, and any other Persons associated with or acting on behalf of the foregoing, or acting on behalf of any predecessors, successors, or affiliates of the foregoing.

Id. at 4 n 1.

Thus, the tolling agreement at issue here binds "all directors [and] officers" and "present or former parents" of the Trump Organization and its affiliates and subsidiaries. Id. It is undisputed that at the time the tolling agreement was executed, each individual defendant, Donald J. Trump, Donald Trump Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney,

were all directors and/or officers of the Trump Organization. NYSCEF Doc. No. 1293 at ¶¶ 673, 680, 696, 710, 736.

Defendants argue that the non-signatory defendants are not bound by the agreement, citing Highland Crusader Offshore Partners, L.P. v Targeted Delivery Techs. Holdings, Ltd., 184 AD3d 116, 121 (1st Dept 2020), for the "general principal that only the parties to a contract are bound by its terms." NYSCEF Doc. No. 835 at 27. However, defendants fail to quote the following sentence, which provides that "[a] non-signatory may be bound by a contract under certain limited circumstances." Highland at 122. See also Oberon Sec., LLC v Titanic Ent. Holdings LLC, 198 AD3d 602, 603 (1st Dept 2021) (non-signatory companies bound by agreement with language defining signatory to include "all subsidiaries, affiliates, [and] successors").

In People v JUUL Labs, Inc., 212 AD3d 414, 417 (1st Dept 2023), in a case involving nearly identical language in a corporate tolling agreement[8], the First Department recently held that non-signatory corporate affiliates, officers, and directors were bound by the agreement. Similarly, here all the individual defendants are bound by the instant tolling agreement's terms and may be held liable for any claims that accrued after July 13, 2014.

Defendants argue that OAG is judicially estopped from asserting that the agreement binds the individual defendants based on statements OAG's counsel made during oral argument in the investigatory special proceeding. NYSCEF Doc. No. 1292 at 26. Specifically, on April 25, 2022, while seeking to hold Donald Trump in contempt for failing to comply with court orders, OAG's counsel stated: "[t]here is hard prejudice because Donald Trump is not a party to the tolling agreement, that tolling agreement only applies to the Trump Organization." NYSCEF Doc. No. 1041 at 59.

For judicial estoppel to be applicable: "First, the party against whom the estoppel is asserted must have argued an inconsistent position in a prior proceeding; and second, the prior inconsistent position must have been adopted by the court in some manner." Bates v Long Island R. Co., 997 F2d 1028, 1038 (2d Cir 1993).

Defendants are correct that the first prong is satisfied, in that the statements OAG's counsel made during oral argument are inconsistent with the position OAG is now taking. However, defendants cannot demonstrate that this Court adopted the prior position. Indeed, this Court did not need to, and did not, consider the tolling agreement when it issued its April 26, 2022 Decision and Order finding Donald Trump in contempt. See Ghatani v AGH Realty, LLC, 181 AD3d 909, 911 (2d Dept 2020) ("For the doctrine [of judicial estoppel] to apply, there must be a final determination endorsing the party's inconsistent position in the prior proceeding").

This Court has not addressed the tolling agreement until now. Accordingly, defendants cannot demonstrate that this Court adopted OAG's prior inconsistent position.

[8] The substantially similar tolling agreement at issue in Juul can be found under Index No. 452168/2019, NYSCEF Doc. No. 176.

Moreover, "[t]he party asserting estoppel must show with respect to himself: '(1) lack of knowledge of the true facts; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change in his position.'" BWA Corp. v Alltrans Exp. U.S.A., Inc., 112 AD2d 850, 853 (1st Dept 1985). Here, none of the defendants claim that they changed their positions or courses of conduct in reliance upon the statement of OAG's counsel during oral argument.

Finally, while judicial estoppel may be applied to prohibit inconsistent changes in factual positions, courts have declined to extend the doctrine to changes in legal positions. Seneca Nation of Indians v New York, 26 F Supp 2d 555, 565 (WD NY 1998), affd, 178 F3d 95 (2d Cir 1999) (finding "[t]here is no legal authority" for "broadening of the doctrine" to "include seemingly inconsistent legal positions"). Who physically signed the agreement is a question of fact; whom it binds is a question of law.

Defendants' argument that the DJT Revocable Trust is not bound by the tolling agreement falls flat. In his deposition, Donald Trump affirmed under oath that the assets of the Trump Organization are held in the DJT Revocable Trust, for which he is the sole donor and beneficiary. NYSCEF Doc. No. 859 at 21. Donald Trump also affirmed that at the time the trust was formed, he was the sole trustee and remained the sole trustee until 2017, when defendants Allen Weisselberg and Donald Trump, Jr. became the sole trustees. Id. at 20-24.

As every beneficiary, donor, and trustee of the DJT Revocable Trust is a defendant bound by the tolling agreement, and as the trust is unquestionably a "parent" of the Trump Organization, so too does the tolling agreement bind the DJT Revocable Trust. See People v Leasing Expenses Co. LLC, 199 AD3d 521, 522 (1st Dept 2021) ("It may likewise be inferred that the trustees had knowledge of the activities of the businesses they controlled through the trust mechanism. Hence, under Executive Law § 63(12), the family trusts and trustees may likewise be held liable for the fraud"); see e.g., Kurzman v Graham, 12 Misc 3d 586, 590 (Sup Ct, NY County 2006) ("courts will not allow the owner of assets to evade creditors by placing the property in a trust while retaining a right to revoke the trust").

Defendants cite to New York Estates, Powers and Trust Law § 11-1.1(b)(17) for the proposition that only a trustee may bind a trust to an agreement. However, § 11-1.1(b)(17) does not state this; rather, it states:

> (b) In the absence of contrary or limiting provisions in the court order or decree appointing a fiduciary, or in a subsequent order or decree, or in the will, deed or other instrument, every fiduciary is authorized:
>
> ...
>
> (17) To execute and deliver agreements, assignments, bills of sale, contracts, deeds, notes, receipts and any other instrument necessary or appropriate for the administration of the estate or trust.

This provision simply says what a fiduciary is permitted to do in the absence of a contrary provision. It does nothing to advance defendants' argument that *only* a trustee may bind a trust,

particularly since defendants fail to cite to any provision of the DJT Revocable Trust restricting who can bind it, as § 11-1.1(b)(17) anticipates.

Moreover, Korn v Korn, 206 AD3d 529, 530 (1st Dept 2022), upon which defendants inexplicably rely, is irrelevant to the instant analysis, as that case involved an examination by the court as to whether a fiduciary had a right or duty to negotiate on behalf of an estate pursuant to § 11-1.1(b)(13), not pursuant to § 11-1.1(b)(17), to which defendants cite.

Finally, "the Attorney General should not be limited, in [her] duty to protect the public interest, by an... agreement [s]he did not join." People v Coventry First LLC, 13 NY3d 108, 114 (2009) (holding Attorney General not bound by arbitration agreement when pursuing Executive Law § 63(12) claim and finding "[s]uch an arrangement between private parties cannot alter the Attorney General's statutory role or the remedies that [s]he is empowered to seek").

The tolling agreement was a mutually beneficial and common arrangement pursuant to which OAG agreed to hold off suing, and Alan Garten, on behalf of the Trump Organization, agreed to toll the statute of limitations. All defendants received the benefit of the bargain; OAG held off suing. OAG is entitled to its benefit of the bargain, the tolling of the statute of limitations, for the limited agreed-upon time, as against anyone it could have sued for the matters at issue at the time at which the agreement was executed. OAG clearly did not intend to permit defendants' principals to evade the tolling agreement based on a technicality contrary to the spirit of the agreement and controlling caselaw.

Statute of Limitations

As a general rule, statutes of limitation start running when a claim accrues, that is, when it can be sued upon. In arguing that OAG's causes of action are untimely, defendants incorrectly assert that the statute of limitations starts running on the date the parties entered into the subject agreements, or when the loans closed. However, the First Department did not use the word "closed," it used the word "completed." Trump, 217 AD3d at 611. Obviously, the transactions were not "completed" while the defendants were still obligated to, and did, annually submit current SFCs to comply with the terms of the loan agreements.

Defendants further assert that any continuing documentation provided after the agreements were entered into, or when the loans closed, is of no consequence if the proceeds were distributed prior to July 2014. NYSCEF Doc. No. 835 at 18. This argument is unavailing. As OAG asserts, each submission of an SFC after July 13, 2014, constituted a separate fraudulent act. Indeed, each submission of a financial document to a third-party lender or insurer would "requir[e] a separate exercise of judgment and authority," triggering a new claim. Yin Shin Leung Charitable Found. v Seng, 177 AD3d 463, 464 (1st Dept 2019) (finding continuous series of wrongs each of which gave rise to its own claim).

Defendants mistakenly assert that if a loan agreement was entered into and its proceeds were dispersed prior to the applicable statute of limitations, then a claim arising out of submitting any subsequent contractually required financial documentation is also untimely, irrespective of when that documentation is submitted. Defendants would have this Court apply a bizarre, invented, inverted form of the "relation back" doctrine, pursuant to which if one aspect of fraudulent

business conduct falls outside the statute of limitations, then all subsequent aspects of fraudulent conduct also fall outside the statute, no matter how inextricably intertwined.

Of course, this is contrary to controlling case law, which holds that a cause of action accrues at the time "when one misrepresents a material fact." Graubard Mollen Dannett & Horowitz v Moskovitz, 86 NY2d 112, 12 (1995). Moreover, even the plain language of Executive Law § 63(12) states: "[t]he term 'repeated' as used herein shall include repetition of any *separate and distinct fraudulent or illegal act*" (emphasis added). Clearly, the submission of each separate fraudulent SFC is a distinct fraudulent act.

OAG is not challenging the loans, the closings, or the disbursements; it is challenging defendants' submissions of financial documents containing false and misleading information. Thus, any SFC that was submitted after July 13, 2014, falls within the applicable statute of limitations. CW Capital Cobalt VR Ltd. v CW Capital Invs., LLC, 195 AD3d 12, 19-20 (1st Dept 2021) (each instance of wrongful conduct a "separate, actionable wrong" giving "rise to a new claim").

Materiality

It is settled that a standalone cause of action under Executive Law § 63(12) does not require a demonstration of materiality but merely that an "act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." People v Gen. Elec. Co., 302 AD2d 314, 314-315 (1st Dept 2003) (holding that, unlike GBL § 349, plaintiff need not prove "the challenged act or practice 'was misleading in a material way'").

Although the Domino's court found that "evidence regarding falsity, materiality, reliance and causation plainly is *relevant* to determining whether the Attorney General has established that the challenged conduct has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud" (Domino's at 11), every Appellate Division and the New York Court of Appeals now hold that materiality and scienter are not requirements for liability under § 63(12).

However, as discussed *infra*, although materiality is required under the second through seventh causes of action, it is not required under a standalone cause of action under Executive Law § 63(12), the OAG's first cause of action.

Defendants argue that the SFCs were not materially misleading, claiming, *inter alia* that: (1) "[t]here is no such thing as objective value"; (2) "a substantial difference between valuation in the SOFCs and appraisal, per se, is not evidence of inflated values"; (3) there is nothing improper about using "fixed assets" valuations as opposed to using the current market valuation approach; and (4) it was proper to include "internally developed intangibles, such as the brand premium used in the valuation of President Trump's golf clubs, in personal financial statements." NYSCEF Doc No. 1292 at 20-23.

Thus, defendants essentially argue that value is inherently subjective; that because internal brand valuations are in the eye of the beholder (here, Donald Trump), they cannot be overvalued. Defendants argue that "[n]o bank or underwriter would have reasonably been materially misled by the alleged misstatements or omissions in the SOFCs and other information the Defendants

made available to their counterparties because no sophisticated counterparty would have considered the SOFCs and other information provided by the Defendants alone as material to extend credit or set an interest rate, or issue an insurance policy or price a risk, without doing their own due diligence." NYSCEF Doc. No. 835 at 45.

Defendants also argue: "[i]t follows that if the user [of the SFCs] is in possession of the correct information, then the financial statements are not materially misstated." Id. at 39. Defendants' stance is, practically speaking, that they may submit false SFCs so long as the recipients know, from their own due diligence, that the information is false.

Accepting defendants' premise would require ignoring decades of controlling authority holding that financial statements and real property valuations are to be judged objectively, not subjectively. FMC Corp. v Unmack, 92 NY2d 179, 191 (1998) ("*objectively* reasonable conclusion, drawn by a competent and experience appraiser, was based on credible evidence" that demonstrated "property was overvalued") (emphasis added); Assured Guar. Mun. Corp. v DLJ Mortg. Cap. Inc., 44 Misc 3d 1206(A) (Sup Ct, NY County 2014) ("Credit Suisse is reading this as a subjective standard, dependent on Assured's expectations. Credit Suisse is wrong. It is well settled that this is an objective standard").

Moreover, courts have long found that "generally, it is the 'market value' which provides the most reliable valuation for assessment purposes." Great Atl. & Pac. Tea Co. v Kiernan, 42 NY2d 236, 239 (1977); Consol. Edison Co. of New York v City of New York, 33 AD3d 915, 916 (2d Dept 2007) ("the standard for assessment remains market value"), affd 8 NY3d 591. Beauty may be in the eye of the beholder, but value is in the eye of the marketplace.

Further, defendants' assertion that the discrepancies between their valuations and the OAG's are immaterial is nonsense. What OAG has established, in many cases by clear, indisputable documentary evidence (as discussed *infra*), is not a matter of rounding errors or reasonable experts disagreeing. OAG has submitted conclusive evidence that between 2014 and 2021, defendants overvalued the assets reported in the SFCs between 17.27-38.51%; this amounts to a discrepancy of between $812 million and $2.2 billion dollars. NYSCEF Doc. No. 766 at 70. Even in the world of high finance, this Court cannot endorse a proposition that finds a misstatement of at least $812 million dollars to be "immaterial." Defendants have failed to identify any authority for the notion that discrepancies of the magnitude demonstrated here could be considered immaterial.

The Second through Seventh Causes of Action

The Second, Third, Fourth, Fifth, Sixth, and Seventh causes of action allege violations of Executive Law § 63(12) based on underlying violations of the New York Penal Law prohibiting falsification of business records, issuance of false financial statements, and insurance fraud.

Liability under New York Penal Law § 175.05 (falsifying business records in the second degree) requires that a person "[m]akes or causes a false entry in the business records of an enterprise."

Liability under New York Penal Law § 175.45 (issuing a false financial statement) requires that a person "represents in writing that a written instrument purporting to describe a person's financial

condition or ability to pay as of a prior date is accurate with respect to such person's current financial condition or ability to pay, whereas [that person] knows it is materially inaccurate in that respect."

Liability under New York Penal Law § 176.05 (insurance fraud) requires that a person submitted an application for insurance either: (1) knowing that it "contain[ed] materially false information concerning any fact material thereto"; or (2) "conceal[ed], for the purpose of misleading, information concerning any fact material thereto."

Accordingly, unlike a standalone cause of action under Executive Law § 63(12). the second through seventh causes of action require demonstrating some component of intent and materiality. People v Alamo Rent A Car, Inc., 174 Misc 2d 501, 505 (Sup Ct, NY County 1997) ("As in all other situations requiring *mens rea*, however, petitioners may prove, by reference to facts and circumstances surrounding the case, that respondents knew that their conduct was unlawful. Moreover, petitioners need not prove respondents acted with an 'evil motive, bad purpose or corrupt design'") (internal citations omitted).

OAG has demonstrated that there remain, at the very least, disputed issues of fact as to whether defendants violated these statutes, intentionally and materially. Thus, there are issues of fact as to causes of action two through seven that require a trial.

The Court has considered defendants' remaining arguments and finds them to be unavailing and/or non-dispositive.

Accordingly, defendants' motion for summary judgment dismissing every cause of action is denied in its entirety.

OAG'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ITS FIRST CAUSE OF ACTION

Summary Judgment Burden on Standalone Executive Law § 63(12) Cause of Action

OAG moves for partial summary judgment, seeking to hold defendants liable under OAG's first cause of action, for fraud under Executive Law § 63(12).

As this Court has noted *ad nauseum*, Executive Law § 63(12) "authorizes the Attorney General to bring a special proceeding against any person or business that engages in repeated or persistent fraudulent or illegal conduct, while broadly construing the definition of fraud so as to include acts characterized as dishonest or misleading and eliminating the necessity for proof of an intent to defraud." People v Apple Health & Sports Club, Ltd., Inc., 206 AD2d 266-267 (1st Dept 1994).

As OAG's first cause of action, the only one upon which it moves for summary judgment, alleges a standalone violation of Executive Law § 63(12), OAG need only prove: (1) the SFCs were false and misleading; and (2) the defendants repeatedly or persistently used the SFCs to transact business.

This instant action is essentially a "documents case." As detailed *infra,* the documents here clearly contain fraudulent valuations that defendants used in business, satisfying OAG's burden to establish liability as a matter of law against defendants. Defendants' respond that: the documents do not say what they say; that there is no such thing as "objective" value; and that, essentially, the Court should not believe its own eyes.[9]

The defenses Donald Trump attempts to articulate in his sworn deposition are wholly without basis in law or fact. He claims that if the values of the property have gone up in the years since the SFCs were submitted, then the numbers were not inflated at that time (i.e.; "But you take the 2014 statement, if something is much more valuable now – or, I guess, we'll have to pick a date which was a little short of now. But if something is much more valuable now, then the number that I have down here is a low number"). NYSCEF Doc. No. 1363 at 69-75). He also seems to imply that the numbers cannot be inflated because he could find a "buyer from Saudi Arabia" to pay any price he suggests.[10] Id. at 30-33, 60-62, 79-80.

The Trump Tower Triplex

This Court takes judicial notice that the Trump Tower apartment in which Donald Trump resided for decades (the "Triplex") is 10,996 square feet. NYSCEF Doc. No. 816 at 2. Between 2012-2016, Donald Trump submitted SFCs falsely claiming that the Triplex was 30,000 square feet, resulting in an overvaluation of between $114-207 million dollars. NYSCEF Doc. Nos. 782 at Rows 833-834, 1028, 783 at Rows 799-800, 1199, 784 at Rows 843-844, 785 at Rows 882-883, 789 at Row 913, 817. The misrepresentation continued even after defendants received written notification from *Forbes* that Donald Trump had been overestimating the square footage of the Triplex by a factor of three.[11]

In opposition, defendants absurdly suggest that "the calculation of square footage is a subjective process that could lead to differing results or opinions based on the method employed to conduct the calculation.[12]" NYSCEF Doc. No. 1293 at 20. Well yes, perhaps, if the area is rounded or oddly shaped, it is possible measurements of square footage could come to slightly differing results due to user error. Good-faith measurements could vary by as much as 10-20%, not 200%.

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[9] As Chico Marx, playing Chicolini, says to Margaret Dumont, playing Mrs. Gloria Teasdale, in "Duck Soup," "well, who ya gonna believe, me or your own eyes?"

[10] This statement may suggest influence buying more than savvy investing.

[11] Three days after receiving a written inquiry from *Forbes*, Trump Organization Vice President, Amanda Miller, sent an email to Trump Organization Executive Vice President and Chief Legal Officer, Alan Garten, indicating that she "spoke to Allen W[eisselberg] re: [Trump World Tower and Trump Tower] – we are going to leave those alone." NYSCEF Doc. No. 821. Although OAG need not show intent to deceive under a standalone § 63(12) cause of action, this directive to continue to use a grossly inflated number despite clear knowledge it is false demonstrates the repetitive and ongoing nature of defendants' propensity to engage in fraud.

[12] Despite this assertion in their motion papers, counsel for defendants, Christopher Kise, Esq, conceded during oral argument held on September 22, 2023, that square footage is, in fact, an objective number.

A discrepancy of this order of magnitude, by a real estate developer sizing up his own living space of decades, can only be considered fraud.[13]

OAG unquestionably satisfies its two-prong burden of demonstrating the SFCs from 2012-2016 calculated the value of the Triplex based on a false and misleading square footage, and that some of the defendants repeatedly and persistently used the SFCs to transact business.

Seven Springs Estate

Defendant Seven Springs LLC owns over 200 acres of contiguous land in the towns of Bedford, New Castle and North Castle in Westchester County, New York.

In 2000, non-party the Royal Bank of Pennsylvania appraised the "as is" market value of Seven Springs to be $25 million if converted to residential development. NYSCEF Doc. No. 825. In 2006, the same bank performed a new appraisal, which showed Seven Springs had an "as is" market value of $30 million. NYSCEF Doc. No. 826.

In 2012, Seven Springs LLC received another appraisal that estimated a six-lot subdivision on the New Castle portion of the property to have a fair market value of approximately $700,000 per-lot. NYSCEF Doc. No. 829 at 203-206.

In July 2014, because the Trump Organization was considering donating a conservation easement, it retained Cushman & Wakefield to provide a "range of value" of the Seven Springs property. NYSCEF Doc. Nos. 830, 831. Cushman & Wakefield's appraiser, David McArdle, analyzed the sale of eight lots in Bedford, six lots in New Castle, and ten lots in North Castle and determined the fair market value for all 24 lots was approximately $30 million. NYSCEF Doc. No. 831, 832.

Notwithstanding receiving market values from professional appraisals in 2000, 2006, 2012, and 2014 valuing Seven Springs at or below $30 million, Donald Trump's 2011 SFC reported the value to be $261 million, and his 2012, 2013 and 2014 SFCs reported the value to be $291 million.[14] NYSCEF Doc. Nos. 769, 770, 771, 772.

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[13] In fact, OAG demonstrates that as of 2012, no apartment sold in New York City had ever approached the price at which defendants valued the Triplex, noting that the highest overall sale at that time was $88 million for a Central Park West penthouse. The SFCs valued the Triplex at a staggering $180,000,000-$327,000,000 for the years 2012-2016. NYSCEF Doc. No. 1 at ¶276.

[14] The statutes of limitations have run for all claims that accrued before July 13, 2014. However, although not actionable by themselves, evidence of fraud that predates July 13, 2014, may still be used as evidence in evaluating OAG's request for permanent injunctive relief, wherein the Court must determine whether there has been "a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d 490, 496-97 (2016) (detailing standard for permanent injunctive relief under Executive Law 63(12) and "reject[ing] defendants' arguments that the Attorney General must show irreparable harm in order to obtain a permanent injunction").

In early 2016, Cushman & Wakefield performed another appraisal of Seven Springs, which included the planned development, and determined that as of December 1, 2015, the entire parcel was worth $56.6 million. NYSCEF Doc. Nos. 824 at 9; 875; 876.

Even giving defendants the benefit of the $56.6 million figure as of December 1, 2015, the value submitted on Donald Trump's 2014 SFC was inflated by over 400%. Accordingly, OAG has demonstrated liability for the false 2014 SFC for fraudulently inflating the value of Seven Springs.

Trump Park Avenue

Trump Park Avenue is a residential building included as an asset on Donald Trump's SFCs for the years 2011-2021. NYSCEF Doc. Nos. 769-779. In 2011, 12 of the unsold residential condominium units were subject to New York City's rent regulation laws. NYSCEF Doc. No. 948 at 3. By 2014, nine units remained subject to rent restrictions. NYSCEF Doc. No. 966. By 2020, six units remained subject to rent restrictions. NYSCEF Doc. No. 971.

A 2010 appraisal performed by the Oxford Group valued the 12 rent-stabilized units at $750,000 total, or $62,500 per unit. NYSCEF Doc. No. 952. A 2020 appraisal performed by Newmark Knight Frank valued the six units that remained subject to stabilization at $22,800,090 total, or $3,800,315 per unit. NYSCEF Doc. No. 972.

Notwithstanding, for the years 2014-2021, the Trump Organization submitted SFCs that valued these rent-restricted units as if they were unencumbered, inflating the value of each unit between as much 700% (in 2014) and 64% (in 2021). NYSCEF Doc. Nos. 772-779.

In an unsuccessful attempt to rebut OAG's prima facie demonstration, defendants proffer that the units are not overvalued because "the rent-stabilized units have the potential at some point in the future to be converted into unencumbered (by rent stabilization) units."[15] NYSCEF Doc. No. 1292 at 57. They further concede that "[t]his is the assumption the owner made when assessing potential asset pricing or value." Id.

[15] As every New Yorker knows, rent regulated units may be passed on from one generation to the next in perpetuity.

However, the SFCs are required to state "current" values, not "someday, maybe" values. At the time defendants provided the subject SFCs to third parties they unquestionably falsely inflated the value of the units based on a false premise that they were unrestricted.[16]

40 Wall Street

The Trump Organization, through defendant 40 Wall Street LLC, owns a ground lease at 40 Wall Street and pays ground rent to the landowner.

In 2010, Cushman & Wakefield appraised the Trump Organization's interest in 40 Wall Street at $200 million. NYSCEF Doc. Nos. 878-79. Cushman & Wakefield appraised again in 2011 and 2012, reaching valuations of between $200 and $220 million. NYSCEF Doc. Nos. 881-82. The Trump Organization possessed and was familiar with these appraisals. NYSCEF Doc. Nos. 817 at 135-138; 883.

Despite these appraisals, the 2011 and 2012 SFCs valued the Trump Organization's interest in the property at $524.7 million and $527.2 million, respectively, an overvaluation of more than $300 million each year.[17] NYSCEF Doc. Nos. 769, 770.

In 2015, Cushman & Wakefield once again appraised the property, and valued it at $540 million.[18] NYSCEF Doc. No. 887. Notwithstanding this appraised value, the 2015 SFC listed the value of 40 Wall Street at $735.4 million.[19] NYSCEF Doc. No. 773.

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[16] Mazars accountant Donald Bender testified that when he asked Jeffrey McConney, "Do you have any other appraisals?", Jeffrey McConney stated "I have nothing else," demonstrating an intent to conceal or mislead the accountants. NYSCEF Doc. No. 1262 at 243.

Further, Patrick Birney, a Trump Organization employee working directly under Jeffrey McConney, conceded that the Trump Organization maintained a spreadsheet for day-to-day operations on the Trump Park Avenue offering plan that included both the offering plan prices *and* the current market values, but that the Trump Organization concealed its own actual market estimates from Mazars by omitting the market value column in its spreadsheet and providing Mazars with only the offering plan prices. NYSCEF Doc. No. 946.

[17] Although any liability arising out of the submission of the 2011 and 2012 SFCs is time barred; as previously discussed, these submissions may be considered as evidence in support of OAG's request for injunctive relief.

[18] OAG plausibly asserts that this $540 million is also inflated; however, for purposes of this motion, OAG does not dispute the number, and argues that, even if the Court were to accept defendants' number as accurate, the 2015 SFC was still materially false, as it stated the value as nearly $200 million more than the $540 million appraisal. NYSCEF Doc. No. 766 at n 7.

[19] An email exchange dated August 4, 2014, between Allen Weisselberg and his son, Jack Weisselberg, a Ladder Capital employee, discusses the 2015 $540 million Cushman & Wakefield appraisal. NYSCEF Doc. No. 888. Notwithstanding direct knowledge of it, the 2015 SFC valued 40 Wall Street at nearly $200 million more. NYSCEF Doc. No. 773.

Defendants assert that overvaluations of two hundred million dollars are immaterial, as the "NYAG has produced no evidence to suggest... that Ladder Capital would have been uncomfortable allowing President Trump to guarantee the 40 Wall Street Loan if his net worth was only $1.9 billion, as the NYAG contends." NYSCEF Doc. No. 835 at 48. They further emphasize that "Ladder Capital has received in excess of $40 million in interest and 40 Wall Street LLC has never defaulted under the Loan."[20] Id.

Defendants' argument misses the mark. As has been explained to defendants many times, in many legal proceedings, and in painstaking detail, "where, as here, there is a claim based on fraudulent activity [under Executive Law 63(12)], disgorgement may be available as an equitable remedy, *notwithstanding the absence of loss to individuals or independent claims for restitution.*" Ernst & Young at 569 (emphasis added). Accordingly, it is not significant that the banks made money (or did not lose money)[21], or that they would have done business with the Trump Organization notwithstanding. The law is clear that the only requirements for liability to attach under a standalone Executive Law § 63(12) cause of action are (1) a finding that the SFCs were false and misleading; and (2) that defendants repeatedly or persistently used the SFCs to conduct business.

Accordingly, OAG has demonstrated liability for the false valuation of 40 Wall Street in the 2015 SFC.

Mar-a-Lago

Donald Trump purchased Mar-a-Lago in 1985. In 1993, he sought, and obtained, permission from the Town of Palm Beach to turn the property into a social club (NYSCEF Doc. No. 900), and on August 10, 1993, he entered into a "Declaration of Use Agreement" by which he agreed "the use of Land shall be for a private social club" and that "[a]ny additional uses of the Land shall be subject to approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Landmarks Preservation Commission of the Town, the Architectural Review Commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or any agencies under the foregoing governmental authorities." NYSCEF Doc. No. 915.

In 1995, Donald Trump signed a "Deed of Conservation and Preservation Easement" in which he gave up his right to use Mar-a-Lago for any purpose other than as a social club (the "1995 Deed"). NYSCEF Doc. No. 901. In 2002, Donald Trump signed a "Deed of Development Rights." NYSCEF Doc. No. 902. As part of granting a conversation easement to the National

[20] The defendant borrowers did not default on any loans; but we only know that with hindsight. Markets are volatile, and borrowers come in all shapes and sizes. The next borrower, or the one after that, might default, and if its SFCs are false, the lender might unfairly be left holding the bag. This will distort the lending marketplace and deprive other potential borrowers of the opportunity to obtain loans and create wealth.

[21] The subject loans made the banks lots of money; but the fraudulent SFCs cost the banks lots of money. The less collateral for a loan, the riskier it is, and a first principal of loan accounting is that as risk rises, so do interest rates. Thus, accurate SFCs would have allowed the lenders to make even more money than they did.

Trust for Historic Preservation, Donald Trump agreed that "Trump intend[s] to forever extinguish [his] right to develop or use the Property for any purpose other than club use" (the "2002 Deed"). The 2002 Deed also specifically "limits changes to the Property including, without limitation, the division or subdivision of the Property for any purpose, including use as single family homes, the interior renovation of the mansion, which may be necessary and desirable for the sale of the Property as a single family residential estate, the construction of new buildings and the obstruction of open vistas." Id. In exchange for granting the easement, Mar-a-Lago was taxed at a significantly lower rate (the club rate) than it otherwise would have been (the private home rate). NYSCEF Doc. No. 903.

From 2011-2021, the Palm Beach County Assessor appraised the market value of Mar-a-Lago at between $18 million and $27.6 million. NYSCEF Doc. No. 905.

Notwithstanding, the SFCs' values do not reflect these land use restrictions. Donald Trump's SFCs for 2011-2021 value Mar-a-Lago at between $426,529,614 million and $612,110,496, an overvaluation of *at least 2,300%*, compared to the assessor's appraisal. NYSCEF Doc. Nos. 769-779.

In an attempt to rebut the OAG's demonstration, defendants rely on the opinion affidavit of Lawrence Moens, who they purport is "the most accomplished and knowledgeable ultra-high net worth real estate broker in Palm Beach, Florida."[22] Moens claims that "the SOFC were and are appropriate and indeed *conservative*." NYSCEF Doc. No. 1292 at 35-36 (emphasis added). The Moens' affidavit states in a conclusory fashion that because he believes "this unique property offers to an elite purchaser the unparalleled opportunity to own an exclusive and extensive family compound in the most desirable sections of Palm Beach... the valuations in the SOFC were reasonable and below my estimate for the market value of the property each year." NYSCEF Doc. No. 1435. Moreover, Moens opines that "[i]f Mar-A-Lago was available for sale, I am confident that in short order, I would be in a position to produce a ready, willing and able buyer who would have interest in securing the property for their personal use as a residence, or even, their own club." Id. at 29. Critically, Moens does not opine *at what price* he is "confident" he could find a buyer (although he opines separately, without relying on any objective evidence, that he believes that as of 2023 the property is worth $1.51 *billion*[23]).

It is well-settled that: "[w]here the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation, however, the opinion should be given no probative force and is insufficient to withstand summary judgment." Diaz v New York Downtown Hosp., 99 NY2d 542, 544 (2002); see also Gardner v Ethier, 173 AD2d 1002, 1003-4 (3d Dept 1991) ("the expert

[22] At oral argument, his domain of expertise was enlarged to nationwide status.

[23] In his sworn deposition, when asked "[w]ho were the dozen or so [qualified] buyers that you were referencing in your report, Lawrence Moens replied: "I could dream up anyone from Elon Musk to Bill Gates and everyone in between. Kings, emperors, heads of state. But with net worths in the multiple billions. I don't know how many people in the world have a net worth of more than $10 billion, but I think it's quite a number. There are a lot." NYSCEF Doc. No. 1428 at 184-185. Obviously, this Court cannot consider an "expert affidavit" that is based on unexplained and unsubstantiated "dream[s]."

affidavit is also inadmissible because it is conclusory and the views are apparently based to a great extent on hearsay statements from unspecified witnesses as well as upon speculations on the part of the expert"). Accordingly, defendants' reliance on the Moens affidavit is unpersuasive and certainly insufficient to rebut OAG's prima face case.

Defendants further imply that they may ignore the plain language of the 2002 Deed restrictions because they would likely be able to use the Florida judicial system to get out of their contractual requirements; they further assert that because they may successfully breach their contract in the future, they were not required to consider the restrictions of the 2002 Deed when valuing the property. NYSCEF Doc. 1292 at 48-51. This argument is wholly without merit. At the time in which the defendants submitted the SFCs, the restrictions were in effect, and any valuations represented to third-parties must have incorporated those restrictions; failure to do so is fraud. Assets values that disregard applicable legal restrictions are by definition materially false and misleading.

Accordingly, OAG has demonstrated liability for the false valuation of Mar-a-Lago as appears in the SFCs from 2014-2021.

Aberdeen

The Trump Organization owns a golf course located in Aberdeen, Scotland ("Aberdeen"). The value assigned to Aberdeen was comprised of two parts: a value for the golf course and a value for the development of the non-golf course property, the latter of which is the focus here. Developing any of the non-golf course property required that the local Scottish authorities approve any proposed plans.

From 2011-2014, Donald Trump's SFC reported that he had "received outline planning permission [from local Scottish authorities] in December 2008 for... a residential village consisting of 950 holiday homes and 500 single family residences and 36 golf villas." NYSCEF Doc. Nos. 769-776.

The Trump Organization had "outline planning permission" to build a total of 1,486 homes. Notwithstanding, the 2014-2018 SFCs valuations of Aberdeen assumed the Trump Organization had received approval to build 2,500 homes, despite never having received such approval. NYSCEF Doc. Nos. 772-776, 907.

Additionally, the approval of the 950 holiday homes and 36 golf villas came with severe restrictions on their use: they could be used solely as rental properties and could be rented for no more than 12 weeks in any calendar year. NYSCEF Doc. No. 908 at 13. The Trump Organization submitted financial documentation to the local Scottish authorities representing that these short-term rentals would not be profitable and therefore would not add any value to Aberdeen. NYSCEF Doc. Nos. 909 at 36, 910 at 7. Consequently, the only profitable development of Aberdeen would have been the 500 single family residences. In July 2017, non-party Ryden LLP, acting on behalf of the Trump Organization, prepared a development appraisal for Aberdeen wherein it assessed the profit from developing 557 homes and estimated profits in the range of £16,525,000-£18,546,000. NYSCEF Doc. No. 1231 at 10.

In May 2018, the Trump Organization applied to the Aberdeen City Council to reduce the scope of the development project to 550 dwellings, consisting of 500 private residences, 50 leisure/resorts units, and zero holiday homes (having determined they were not profitable). NYSCEF Doc. No. 911. In September 2019, the Aberdeen City Council approved the proposal for a reduction in the proposed development, but restricted the 50 leisure/resort units, as they had the holiday homes, to be "occupied on a holiday letting or fractional ownership basis only and for no other purposes whatsoever including use as a permanent residential unit… ." NYSCEF Doc. No. 907 at 7.

Notwithstanding, the 2019 SFC, finalized a month after the latest approval, derived a value based on the assumption that 2,035 private residential homes could be developed. Adjusting the values to reflect the permissible 500 private residences reduces the value of the Aberdeen undeveloped property as reflected in the 2019 SFC by £164,196.704. NYSCEF Doc. No. 777 at 16, 789 at Cells G561-619, 912.

Although defendants wholly fail to address Aberdeen in any of their three memos of law, in their response to OAG's statement of material facts, they state that "Defendants dispute the veracity of the appraisal because President Trump, as a land developer, took optimistic views of potential future value which is not contemplated in the appraisal, thereby undervaluing Trump Aberdeen." NYSCEF Doc. No. 1293 at 82-83. For all the reasons discussed *supra*, this defense fails.

Accordingly, OAG has demonstrated liability for the false valuation of Aberdeen as appears in the SFCs from 2014-2019.

US Golf Clubs

Donald Trump owns or leases a number of golf clubs across the United States and abroad that are included as assets on his SFCs. NYSCEF Doc. Nos. 769-779. The value for these golf clubs is provided in the aggregate in the SFCs, although supporting accounting spreadsheets evidence the breakdown of the values assigned to each club. NYSCEF Doc. Nos. 781-791.

The "Trump Brand Premium"

The evidence indicates that for the years 2013-2020, the SFCs relied on values that included a 15% or 30% "premium" based on the "Trump brand" for the following seven golf clubs: Trump National Golf Course ("TNGC") Jupiter, TNGC LA, TNGC Colts Neck, TNGC Philadelphia, TNGC DC, TNGC Charlotte, and TNGC Hudson Valley. NYSCEF Doc. Nos. 783-790. However, the SFCs for those years (and, indeed, all the years before this Court), also contained express language stating: "The goodwill attached to the Trump name has significant value that has *not* been reflected in the preparation of this financial statement." NYSCEF Doc. Nos. 769-779 (emphasis added). Accordingly, the SFCs "double dip," both purporting not to include a brand premium while simultaneously including one of 15% or 30%.

In opposition, defendants submit the affidavit of Eli Bartov, an accounting professor at New York University, who distinguishes between overall brand value and brand value ascribed to individual golf courses. His point, ensconced in numerous lines of academic jargon, seems to be that defendants said that they were eschewing the former and opting only for the latter. NYSCEF Doc. No. 1378 at 14-15. This is a red herring and factually incorrect. The SFCs

clearly state that they do not include a brand value for *any* of the properties included in the SFCs; indeed, the SFCs emphatically declare that "[t]he goodwill attached to the Trump name has significant financial value *that has not been reflected in the preparation of this financial statement.*" NYSCEF Doc. Nos. 769-779 (emphasis added). Perhaps Donald Trump could have ascribed a brand value to golf courses that he viewed as "special," but he was obligated to disclose those exceptions when he represented that the SFCs did not reflect his brand value.

TNGC Briarcliff and TNGC LA

The valuations of TNGC Briarcliff and TNGC LA were each comprised of a value for the golf course and a value for the undeveloped land. As the Trump Organization was considering donating a conservation easement over both properties, they had both properties appraised.

An April 2014 appraisal valued the golf club portion of TNGC Briarcliff at $16,500,000; later that same year, Donald Trump valued the golf club portion of TNGC Briarcliff at $73,430,217, *an inflation of more than 300%*, in his SFC. NYSCEF Doc. Nos. 923 at 147; 785 at Row 257. A 2015 appraisal valued the golf club portion of TNGC LA at $16,000,000 as of December 26, 2014; the 2015 SFC valued the golf club portion of TNGC LA at $56,615,895, *an inflation of more than 200%.* NYSCEF Doc. Nos. 924 at 151; 785 at Row 386.

In an attempt to rebut this strong showing of fraud, defendants argue that they were not obligated to use market value, but, instead, were permitted to use the "fixed assets" approach to valuation, pursuant to which defendants may "value" a property by aggregating the money spent to acquire and maintain a property. NYSCEF Doc. No. 1292. They further rely on the Bartov affidavit, which states, in wholly conclusory fashion that: "[t]he assertion that 'Using fixed assets approach does not present the golf clubs at their estimated current value because the approach ignores market conditions and the behavior of informed buyers and sellers' is unsubstantiated and false." NYSCEF Doc. No. 1378 at 29.

Bartov is incorrect. Each of the corresponding SFCs include representations that "[a]ssets are stated at their estimated current values..." NYSCEF Doc. Nos. 769-779.[24] Accordingly, it is false and misleading to use a fixed-assets evaluation, which is completely different. The price for which you purchase property is not necessarily the price for which you can sell it. The latter, not the former, matters to lenders who want adequate collateral.

The Membership Liabilities

As part of the purchase of several of the golf club properties, Donald Trump agreed to assume the obligation to pay back refundable non-interest-bearing long-term membership deposits. However, notwithstanding that these liabilities must be satisfied in the future, the SFCs from 2012-2021 value them at $0. NYSCEF Doc. Nos. 769-779. This is false; they are a liability in the millions of dollars.

[24] In their response to OAG's statement of material facts, defendants concede that "GAAP defines Estimated Current Value as 'the amount at which the item could be exchanged between a buyer and seller, each of whom is well informed and willing, and neither of whom is compelled to buy or sell." NYSCEF Doc No. 1293 at 17.

However, the SFCs all state: "The fact that Mr. Trump will have the use of these funds for that period without cost and that the source of repayment will most likely be a replacement membership has led him to value this liability at zero." See e.g., NYCSCEF Doc. No. 772.

Although it was false to report the membership liabilities as $0, it was not, under the circumstances, *misleading*, as the SFCs state that the reason for so doing. Accordingly, OAG cannot prevail on liability as a result of the failure to report the membership liabilities.

Yet, as discussed *supra*, OAG has demonstrated liability for submitting fraudulent SFCs in 2014-2020 that falsely value the aforementioned US Golf Clubs based on undisclosed brand premiums and failure to report "current" values.

Vornado Partnership Properties

Donald Trump has a 30% limited partnership interest with non-party Vornado Realty Trust in entities that own office buildings in New York City (at 1290 Avenue of the Americas, hereinafter "1290 AOA") and San Francisco at 555 California Street.

Cash/Liquid Classification

Donald Trump's 30% limited partnership stake does not permit him to use or withdraw funds held by the partnerships. NYSCEF Doc. Nos. 916, 917. Notwithstanding, Donald Trump and his trustees classified his 30% interest in the Vornado partnership as a liquid/cash asset on his SFCs for the years 2013-2021. NYSCEF Doc. No. 771-779. This was even though it is "undisputed" by defendants that Donald Trump does not have "the right to use or withdraw [these] funds." NYSCEF Doc. No. 1293 at ¶387-388.

Defendants assert that "[e]ven if the cash held in the partnership was misclassified and should have been reported elsewhere on the SOFCs as an asset (e.g., in the value of the partnership interest), it would not have inflated the total value of cash or President Trump's net worth reported on the SOFCs." NYSCEF Doc No. 1292 at 39.

This argument does not hold any water. Put simply, it was false and misleading for defendants to indicate that it had access to between $14,221,800 and $93,126,589 in liquid assets, sometimes nearly a third of the total cash it claimed, when in fact those assets were completely illiquid. NYSCEF Doc. No. 1293 ¶ 403.

The Appraisals

Cushman & Wakefield appraised the value of 1290 AOA at $2 billion as of November 1, 2012, and $2.3 billion as of November 1, 2016. NYSCEF Doc. No. 919 at 5-6.

However, Donald Trump's 2014 SFC calculated his 30% share based on a purported value of $3,078,338,462; his 2015 SFC was based on a purported value of $2,985,819,936; and his 2016 SFC was based on a purported value of $3,055,000,000. NYSCEF Doc. Nos. 784 at Rows 709-715, 785 at Rows 748-755, 785 at Rows 779-784. This resulted in overvaluations of Donald Trump's 30% interest in 1290 AOA of between $205-$233 million dollars for those years.

CBRE appraised 1290 AOA and determined its value at $2 billion as of October 7, 2021. NYSCEF Doc. No. 947. Nonetheless, the 2021 SFC was calculated based upon a purported value of $2,574,813,800, an overvaluation of Donald Trump's 30% share by $172 million dollars. NYSCEF Doc. No. 791 at Row 918.

The instant motions do not task this Court with determining which appraisals are the most accurate, which would present issues of fact.[25] Rather, time and time again, the Court is not comparing one appraisal to another; it is comparing an independent professional appraisal to a pie-in-the-sky dream of concocted potential.

Accordingly, OAG has demonstrated liability for submitting fraudulent SFCs overvaluing Donald Trump's interest in the Vornado partnership in 2014-2016 and 2021.

Licensing Deals

Each of Donald Trump's SFCs from 2011-2021 has an asset category entitled "Real Estate Licensing Deals," which the SFC represents is value derived from "associations with others for the purpose of developing and managing properties" and the "cash flow that is expected to be derived... from these associations as their potential is realized." NYSCEF Doc. Nos. 769-779. The SFCs further state that "[i]n preparing [these] assessment[s], Mr. Trump and his management considered only situations which have evolved to the point where signed arrangements with the other parties exist and fees and other compensation which he will earn are reasonably quantifiable." Id.

Despite this express language, the SFCs from 2014-2018 and 2020-2021 include valuations of intra-organization deals, all between entities under the Trump Organization umbrella, in this category of assets. NYSCEF Doc. Nos. 1014, 1018, 1019, 1021, 1023, 1024, 1062, 1063, 1064. It was flatly false and misleading to include values of deals between Trump Organization entities while expressly representing in the SFCs that such assets included only valuations derived from "association with others." Improperly including these intra-organization deals resulted in an overvaluation of up to $224 million in 2014, $110 million in 2015, $120 million in 2016, $113 million in 2017, $115 million in 2018, $97 million in 2020, and $106 million in 2021. Id.

OAG has demonstrated liability for the false and misleading valuation of intra-company licensing deals on the SFCs from 2014-2018 and 2020-2021.

The Other Loans

OAG has established that defendants submitted false SFCs after July 13, 2014, pursuant to their other loan commitments. Defendants submitted SFCs to Deutsche Bank as part of their contractual obligations arising out of three different loans: (1) a Chicago Loan, undertaken by 401 North Wabash Venture LLC; (2) a Doral Loan, undertaken by Trump Endeavor LLC; and (3) an Old Post Office Loan, undertaken by Trump Old Post Office LLC. Defendants certified the accuracy of these SFCs to Deutsche Bank for the years 2014-2019 and 2021[26] as part of their

[25] Nor is this Court asked to determine Donald Trump's total wealth.

[26] The gap for 2020 may have been due to the COVID-19 pandemic.

contractual obligations. NYSCEF Doc. Nos. 1097, 1098, 1099, 1100, 1102, 1104, 1106, 1124, 1126, 1155, 1156, 1157.

The Individual Defendants

OAG has demonstrated liability on behalf of all the named individual defendants: (1) **Donald Trump**, as each and every SFC was issued on behalf of "Donald J. Trump"; (2) **Donald Trump, Jr.**, who, along with Allen Weisselberg, certified the accuracy of the SFCs for 2016-2020, and who singlehandedly certified the accuracy of the 2021 SFC (NYSCEF Docs. No. 808-813); (3) **Eric Trump**, who is the listed source for the Seven Springs valuation in 2014,[27] and who signed several guarantor compliance certificates in 2020 and 2021 for Donald J. Trump (NYSCEF Doc. No. 802); (4) **Allen Weisselberg**, who certified the accuracy of the SFCs from 2014-2021 (NYSCEF Doc. Nos. 806-812); (5) and **Jeffrey McConney**, who led the process of preparing all the SFCs since the 1990s[28] (NYSCEF Doc. No. 822 at 52-68).

The Entity Defendants

It is settled law that "[a] parent corporation will not be held liable for the torts or obligations of a subsidiary *unless it can be shown that the parent exercised complete dominion and control over the subsidiary*." Potash v Port Auth. of New York & New Jersey, 279 AD2d 562, 562 (2d Dept 2001) (emphasis added). Here, it is undisputed that Donald Trump, through one corporate form or another, exercised complete control over the umbrella of entities operating in furtherance of, or on behalf of, "the Trump Organization."

Defendants do not dispute that DJT Holdings LLC and DJT Holdings Managing Member LLC are entities that sit at the top of the Trump Organization's organizational chart and together own many of the Trump-affiliated entities that comprise the Trump Organization. DJT Holdings Managing Member LLC owns 100% of the Trump Organization and DJT Holdings LLC owns 100% of the Trump Organization LLC. NYSCEF Doc. Nos. 4, 819 at ¶1.

Accordingly, OAG has established liability on behalf of all the named entity defendants: (1) **The Trump Organization Inc.**, **the Trump Organization LLC**, **DJT Holdings LLC**, and **DJT Holdings Managing Member LLC**, as each participated in the preparation, submission and certification of the SFCs after July 13, 2014 through the acts of the individual defendants as described *supra*; (2) the **DJT Revocable Trust**, as both Donald Trump Jr. and Allen Weisselberg certified the accuracy of the 2016-2019 SFCs in their capacities as "Trustee, the Donald J. Trump Revocable Trust dated April 7, 2014, as amended" (NYSCEF Doc. No. 808); (3) **Trump Endeavor LLC**, which was the borrower on the Doral Loan, for which SFCs were submitted after July 13, 2014; (4) **401 North Wabash Venture LLC**, which was the borrower on a loan for "Trump Chicago," under which SFCs were required to be (and were) submitted

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[27] Eric Trump also reaffirmed the SFCs accuracy on July 9, 2019. NYSCEF Doc. Nos. 782 at Row 679, 783 at Rows 638-40, 784 at Row 660, 1183.

[28] Jeffrey McConney acknowledged his personal role in preparing supporting data for Donald Trump's SFCs beginning in 2011, testifying that: "I assemble the documentation" and that he would send both supporting data spreadsheets and backup documentation to the accountants. He further conceded that the supporting data spreadsheets were referred to as "Jeff's supporting data" or "Jeff's supporting schedule." NYSCEF Doc. No. 822 at 40, 67-68, 212, 294.

after July 13, 2014; (5) **Trump Old Post Office LLC**, as it was the borrower on the "Old Post Office" loan, under which SFCs were required to be (and were) submitted after July 13, 2014; and **Seven Springs LLC**, the borrowing entity (as described *supra*) under which SFCs were required to be (and were) submitted after July 13, 2014.

Injunctive Relief

OAG has prevailed on liability on its first cause of action pursuant to Executive Law § 63(12) as against all defendants: Donald J. Trump; Donald Trump, Jr.; Eric Trump; Allen Weisselberg; Jeffrey McConney; the DJT Revocable Trust; the Trump Organization Inc; the Trump Organization LLC; DJT Holdings LLC; DJT Holdings Managing Member LLC; Trump Endeavor 12 LLC; 401 North Wabash Venture LLC; Trump Old Post Office LLC; 40 Wall Street LLC; and Seven Springs LLC.

If liability is established under Executive Law § 63(12), the statute itself provides that the attorney general may obtain "an order enjoining the continuance of such business activity or of any fraudulent or illegal acts... and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of ... section one hundred thirty of the general business law...."

"[T]he Attorney General may obtain permanent injunctive relief under... Executive Law § 63(12) upon a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d at 496-97 (further stating "[t]his is not a 'run of the mill' action for an injunction, but rather one authorized by remedial legislation, brought by the Attorney-General on behalf of the People of the State and for the purposes of preventing fraud and defeating exploitation") (internal citations omitted).

Having found, at the commencement of the action, that OAG had preliminarily demonstrated defendants' "propensity to engage in persistent fraud," this Court appointed the Hon. Barbara S. Jones (ret.) as an independent monitor "to ensure there is no further fraud or illegality that violates § 63(12) pending the final disposition of this action." NYSCEF Doc. No. 194. On August 3, 2023, Judge Jones reported as follows:

> [S]ince my appointment I have reviewed material financial and accounting information submitted by the Trump Organization. As part of my review, I have made preliminary observations regarding certain current financial disclosures with respect to the Trump Organization's reporting of financial information. Specifically, I have observed that information regarding certain material liabilities provided to lenders – such as intercompany loans between or among Trust entities and Donald J. Trump, certain of the Trust's contingent liabilities, as well as refundable golf club membership deposits—has been incomplete. The Trust also has not consistently provided all required annual and quarterly certifications attesting to the accuracy of certain financial statements.

> In addition, annual audited financial statements for certain entities, prepared by an external accounting firm, list depreciation expenses. However, interim internally prepared financial statements provided to third parties for these same entities inconsistently report depreciation expenses.

NYSCEF Doc. No. 647. Even with a preliminary injunction in place, and with an independent monitor overseeing their compliance, defendants have continued to disseminate false and misleading information while conducting business. This ongoing flouting of this Court's prior order, combined with the persistent nature of the false SFCs year after year, have demonstrated the necessity of canceling the certificates filed under GBL § 130, as the statute provides. People v Northern Leasing, 70 Misc 3d 256, 279-80 (Sup Ct, NY County 2020) (denying a trial on the petition and ordering the LLC respondents to dissolve upon a finding of persistent fraud under Executive Law § 63(12)).

Having prevailed on liability on a standalone Executive Law § 63(12) cause of action, the Attorney General is entitled to the first two prayers for relief sought in her complaint: (1) canceling any certificate filed under and by virtue of the provisions of New York General Business Law § 130 for all the entity defendants found liable, as well as any other entity controlled or beneficially owned by the individual defendants found liable herein, which and who participated in or benefitted from the foregoing fraudulent schemes; and (2) appointing an independent monitor to oversee compliance, financial reporting, valuations, and disclosures to lenders, insurers, and tax authorities at the Trump Organization. NYSCEF Doc. No. 1 at 213.

Remaining Issues to be Determined at Trial

Anything presented in the parties' moving papers that this Court has not ruled upon in this Decision and Order, including determinations on liability for the second through seventh causes of action, the amount of disgorgement of profits to which OAG is entitled, and determinations on the third through ninth prayers for relief sought by OAG in its complaint, presents disputed issues of fact that shall proceed to trial.

Conclusion

For the reasons stated herein, it is hereby

ORDERED that defendants' motion for summary judgment is denied; and it is further

ORDERED that plaintiff's motion for sanctions is granted in part, to the extent of sanctioning Michael Madaio, Esq. (Habba Madaio & Associates, LLP), Clifford S. Robert, Esq. (Robert & Robert PLLC), Michael Farina Esq. (Robert & Robert PLLC), Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC), and Armen Morian (Morian Law PLLC) in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Decision and Order; and it is further

ORDERED that plaintiff's motion for partial summary judgment on its first cause of action is granted in part, to the extent of finding defendants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, the DJT Revocable Trust, the Trump Organization Inc, the Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC to be liable as a matter of law for persistent violations of Executive Law § 63(12); and it is further

ORDERED that any certificates filed under and by virtue of GBL § 130 by any of the entity defendants or by any other entity controlled or beneficially owned by Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney are canceled; and it is further

ORDERED that within 10 days of the date of this order, the parties are directed to recommend the names of no more than three potential independent receivers to manage the dissolution of the canceled LLCs; and it is further

ORDERED that the Hon. Barbara S. Jones (ret.) shall continue to serve as an independent monitor of the Trump Organization until further Court order; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

9/26/2023
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[X]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

v.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

Defendants.

Index No: 452564/2022

Engoron, J.S.C.

AFFIRMATION OF SERVICE

Motion Seq. No. 028

PETER A. SWIFT, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms the following statements to be true under penalty of perjury:

1. I am an associate of the law firm of Habba Madaio & Associates, LLP, and am not a party to the above-captioned action.

2, On October 25, 2023, I served the within Notice of Appeal and Informational Statement, both dated October 25, 2023, together with a copy of the Decision and Order of the Supreme Court of the State of New York, New York County (Honorable Arthur F. Engoron, J.S.C.), dated September 26, 2023, with Notice of Entry, upon the following parties, at the addresses listed after each party's name, by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in official deposit under the exclusive care and custody of the United

States Postal Service within the State of New York:

Kevin C. Wallace, Esq.
Colleen K. Faherty, Esq.
Office of the New York State Attorney General
28 Liberty Street
New York, New York 10005
Counsel for Plaintiff

Christopher M. Kise, Esq.
(Admitted Pro Hac Vice)
Continental PLLC
101 North Monroe Street, Suite 750
Tallahassee, Florida 32301
Counsel for Defendants The Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

Clifford S. Robert, Esq.
Michael Farina, Esq.
Robert & Robert PLLC
526 RXR Plaza
Uniondale, New York 11556
Counsel for Donald Trump, Jr., and Eric Trump

Dated: New York, New York
October 25, 2023

Peter A. Swift

Exhibit F

From: efile@nycourts.gov [mailto:efile@nycourts.gov]
Sent: Monday, October 30, 2023 12:20 PM
To: Clifford Robert <crobert@robertlaw.com>; Michael Farina <mfarina@robertlaw.com>
Subject: NYSCEF Alert: Appellate Division - 1st Dept - Civil Action - General - <DOCUMENT RETURNED> (PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York v. Donald J. Trump et al)

Appellate Division - 1st Dept
DOCUMENT RETURNED FOR CORRECTION
10/30/2023

The court has returned the documents listed below for the following reasons:
Please file this pdf under the case #2023-04925 as a copy of an additional notice of appeal.

Follow the steps below to correct your filing:

1. Make the corrections to your document as instructed in this email, then save it as a PDF.
2. Log into NYSCEF with the same ID that was used to file the original document.
3. Search for the case or select My Cases, then select the case to bring up the Document List.
4. On the Document List, find the "Refile Document" link under the document you need to correct, and attach the corrected document.

Case Information

Appeal #: **Not Assigned**
Caption: **PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York v. Donald J. Trump et al**
eFiling Status: **Waiting for Index Number**

Documents Returned on 10/30/2023 12:20 PM

Doc #	Document	Filed Date
1	COPY OF NOTICE OF APPEAL WITH PROOF OF FILING / INFORMATIONAL STATEMENT / ORDER OR JDMT APPEALED FROM Notice of Appeal attaching Notice of Entry and Decision and Order; Informational Statement; and Affirmation of Service	10/27/2023

E-mail Notifications Sent

Name	Email Address
CLIFFORD ROBERT	crobert@robertlaw.com

Filing User

CLIFFORD ROBERT | crobert@robertlaw.com | 516-832-7000 | 516-823-7080 | 526 RXR Plaza, Uniondale, NY 11556

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

Danielle Henderson being duly sworn, deposes and says:

I am over 18 years of age, I am not a party to the action, and I reside in Kings County in the State of New York. I served a true copy of the annexed ***Notice of Motion of Non-Party Appellants to Sever Appeals*** on January 23, 2024 via NYSCEF, addressed to the last known address of the addressee as indicated below:

Judith N. Vale, Esq.
Dennis Fan, Esq.
New York State Attorney General's Office
28 Liberty Street, 23rd Floor
New York, New York 10005
judith.vale@ag.ny.gov
dennis.fan@ag.ny.gov
Appeal.NYC@ag.nyc.gov

Danielle Henderson
Danielle Henderson

Sworn to before me this
23rd day of January 2024

NOTARY PUBLIC

BRIAN J ISAAC
STATE OF NEW YORK
NOTARY PUBLIC
NASSAU COUNTY
02IS4920650
MY COMMISSION EXPIRES 10/05/2026

Case No.: 2023-04925
SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION – FIRST DEPARTMENT

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff-Respondent,

-against-

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC. THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC and SEVEN SPRINGS LLC,

Defendants-Appellants.

----------X

CLIFFORD S. ROBERT, ESQ. (ROBERT & ROBERT PLLC), MICHAEL FARINA, ESQ. (ROBERT & ROBERT PLLC), CHRISTOPHER M. KISE, ESQ. (CONTINENTAL PLLC), MICHAEL MADAIO, ESQ. (HABBA MADAIO & ASSOCIATES, LLP) AND ARMEN MORIAN, ESQ. (MORIAN LAW PLLC),

Non-Party Appellants.

NOTICE OF MOTION OF NON-PARTY APPELLANTS TO SEVER APPEALS

LAW OFFICES OF MICHAEL S. ROSS
POLLACK POLLACK ISAAC & DECICCO, LLP
Attorneys for the Non-Party Appellants (ONLY)
250 Broadway, Suite 600
New York, NY 10007
(212) 223-8100

To:
Attorney(s) for

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contention contained in the annexed document are not frivolous.

Dated: *January 23, 2024*

Signature: _____

Print Signer's Name: _____